
EXECUTIVE ORDERS

Executive Order 13422 of January 18, 2007

Further Amendment to Executive Order 12866 on Regulatory Planning and Review

By the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered that Executive Order 12866 of September 30, 1993, as amended, is further amended as follows:

Section 1. Section 1 is amended as follows:

(a) Section 1(b)(1) is amended to read as follows:

“(1) Each agency shall identify in writing the specific market failure (such as externalities, market power, lack of information) or other specific problem that it intends to address (including, where applicable, the failures of public institutions) that warrant new agency action, as well as assess the significance of that problem, to enable assessment of whether any new regulation is warranted.”

(b) by inserting in section 1(b)(7) after “regulation” the words “or guidance document”.

(c) by inserting in section 1(b)(10) in both places after “regulations” the words “and guidance documents”.

(d) by inserting in section 1(b)(11) after “its regulations” the words “and guidance documents”.

(e) by inserting in section 1(b)(12) after “regulations” the words “and guidance documents”.

Sec. 2. Section 2 is amended as follows:

(a) by inserting in section 2(a) in both places after “regulations” the words “and guidance documents”.

(b) by inserting in section 2(b) in both places after “regulations” the words “and guidance documents”.

Sec. 3. Section 3 is amended as follows:

(a) by striking in section 3(d) “or ‘rule’ ” after “ ‘Regulation’ ”;

(b) by striking in section 3(d)(1) “or rules” after “Regulations”;

(c) by striking in section 3(d)(2) “or rules” after “Regulations”;

- (d) by striking in section 3(d)(3) “or rules” after “Regulations”;
- (e) by striking in section 3(e) “rule or” from “final rule or regulation”;
- (f) by striking in section 3(f) “rule or” from “rule or regulation”;
- (g) by inserting after section 3(f) the following:

“(g) “Guidance document” means an agency statement of general applicability and future effect, other than a regulatory action, that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue.
- (h) “Significant guidance document” —
 - (1) Means a guidance document disseminated to regulated entities or the general public that, for purposes of this order, may reasonably be anticipated to:
 - (A) Lead to an annual effect of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
 - (B) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
 - (C) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or
 - (D) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive order; and
 - (2) Does not include:
 - (A) Guidance documents on regulations issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556, 557;
 - (B) Guidance documents that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import or export of non-defense articles and services;
 - (C) Guidance documents on regulations that are limited to agency organization, management, or personnel matters; or
 - (D) Any other category of guidance documents exempted by the Administrator of OIRA.”

Sec. 4. Section 4 is amended as follows:

- (a) Section 4(a) is amended to read as follows: “The Director may convene a meeting of agency heads and other government personnel as appropriate to seek a common understanding of priorities and to coordinate regulatory efforts to be accomplished in the upcoming year.”
- (b) The last sentence of section 4(c)(1) is amended to read as follows: “Unless specifically authorized by the head of the agency, no rulemaking shall commence nor be included on the Plan without the approval of the agency’s Regulatory Policy Office, and the Plan shall contain at a minimum:”.
- (c) Section 4(c)(1)(B) is amended by inserting “of each rule as well as the agency’s best estimate of the combined aggregate costs and benefits of all its regulations planned for that calendar year to assist with the identification of priorities” after “of the anticipated costs and benefits”.

(d) Section 4(c)(1)(C) is amended by inserting “, and specific citation to such statute, order, or other legal authority” after “court order”.

Sec. 5. Section 6 is amended as follows:

(a) by inserting in section 6(a)(1) “In consultation with OIRA, each agency may also consider whether to utilize formal rulemaking procedures under 5 U.S.C. 556 and 557 for the resolution of complex determinations” after “comment period of not less than 60 days.”

(b) by amending the first sentence of section 6(a)(2) to read as follows: “Within 60 days of the date of this Executive order, each agency head shall designate one of the agency’s Presidential Appointees to be its Regulatory Policy Officer, advise OMB of such designation, and annually update OMB on the status of this designation.”

Sec. 6. Sections 9–11 are redesignated respectively as sections 10–12.

Sec. 7. After section 8, a new section 9 is inserted as follows:

“**Sec. 9. Significant Guidance Documents.** Each agency shall provide OIRA, at such times and in the manner specified by the Administrator of OIRA, with advance notification of any significant guidance documents. Each agency shall take such steps as are necessary for its Regulatory Policy Officer to ensure the agency’s compliance with the requirements of this section. Upon the request of the Administrator, for each matter identified as, or determined by the Administrator to be, a significant guidance document, the issuing agency shall provide to OIRA the content of the draft guidance document, together with a brief explanation of the need for the guidance document and how it will meet that need. The OIRA Administrator shall notify the agency when additional consultation will be required before the issuance of the significant guidance document.”

Sec. 8. Newly designated section 10 is amended to read as follows:

“**Sec. 10. Preservation of Agency Authority.** Nothing in this order shall be construed to impair or otherwise affect the authority vested by law in an agency or the head thereof, including the authority of the Attorney General relating to litigation.”

GEORGE W. BUSH

The White House,
January 18, 2007.

Executive Order 13423 of January 24, 2007

Strengthening Federal Environmental, Energy, and Transportation Management

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to strengthen the environmental, energy, and transportation management of Federal agencies, it is hereby ordered as follows:

Section 1. Policy. It is the policy of the United States that Federal agencies conduct their environmental, transportation, and energy-related activities

under the law in support of their respective missions in an environmentally, economically and fiscally sound, integrated, continuously improving, efficient, and sustainable manner.

Sec. 2. Goals for Agencies. In implementing the policy set forth in section 1 of this order, the head of each agency shall:

(a) improve energy efficiency and reduce greenhouse gas emissions of the agency, through reduction of energy intensity by (i) 3 percent annually through the end of fiscal year 2015, or (ii) 30 percent by the end of fiscal year 2015, relative to the baseline of the agency's energy use in fiscal year 2003;

(b) ensure that (i) at least half of the statutorily required renewable energy consumed by the agency in a fiscal year comes from new renewable sources, and (ii) to the extent feasible, the agency implements renewable energy generation projects on agency property for agency use;

(c) beginning in FY 2008, reduce water consumption intensity, relative to the baseline of the agency's water consumption in fiscal year 2007, through life-cycle cost-effective measures by 2 percent annually through the end of fiscal year 2015 or 16 percent by the end of fiscal year 2015;

(d) require in agency acquisitions of goods and services (i) use of sustainable environmental practices, including acquisition of biobased, environmentally preferable, energy-efficient, water-efficient, and recycled-content products, and (ii) use of paper of at least 30 percent post-consumer fiber content;

(e) ensure that the agency (i) reduces the quantity of toxic and hazardous chemicals and materials acquired, used, or disposed of by the agency, (ii) increases diversion of solid waste as appropriate, and (iii) maintains cost-effective waste prevention and recycling programs in its facilities;

(f) ensure that (i) new construction and major renovation of agency buildings comply with the *Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings set forth in the Federal Leadership in High Performance and Sustainable Buildings Memorandum of Understanding (2006)*, and (ii) 15 percent of the existing Federal capital asset building inventory of the agency as of the end of fiscal year 2015 incorporates the sustainable practices in the Guiding Principles;

(g) ensure that, if the agency operates a fleet of at least 20 motor vehicles, the agency, relative to agency baselines for fiscal year 2005, (i) reduces the fleet's total consumption of petroleum products by 2 percent annually through the end of fiscal year 2015, (ii) increases the total fuel consumption that is non-petroleum-based by 10 percent annually, and (iii) uses plug-in hybrid (PIH) vehicles when PIH vehicles are commercially available at a cost reasonably comparable, on the basis of life-cycle cost, to non-PIH vehicles; and

(h) ensure that the agency (i) when acquiring an electronic product to meet its requirements, meets at least 95 percent of those requirements with an Electronic Product Environmental Assessment Tool (EPEAT)-registered electronic product, unless there is no EPEAT standard for such product, (ii)

enables the Energy Star feature on agency computers and monitors, (iii) establishes and implements policies to extend the useful life of agency electronic equipment, and (iv) uses environmentally sound practices with respect to disposition of agency electronic equipment that has reached the end of its useful life.

Sec. 3. Duties of Heads of Agencies. In implementing the policy set forth in section 1 of this order, the head of each agency shall:

(a) implement within the agency sustainable practices for (i) energy efficiency, greenhouse gas emissions avoidance or reduction, and petroleum products use reduction, (ii) renewable energy, including bioenergy, (iii) water conservation, (iv) acquisition, (v) pollution and waste prevention and recycling, (vi) reduction or elimination of acquisition and use of toxic or hazardous chemicals, (vii) high performance construction, lease, operation, and maintenance of buildings, (viii) vehicle fleet management, and (ix) electronic equipment management;

(b) implement within the agency environmental management systems (EMS) at all appropriate organizational levels to ensure (i) use of EMS as the primary management approach for addressing environmental aspects of internal agency operations and activities, including environmental aspects of energy and transportation functions, (ii) establishment of agency objectives and targets to ensure implementation of this order, and (iii) collection, analysis, and reporting of information to measure performance in the implementation of this order;

(c) establish within the agency programs for (i) environmental management training, (ii) environmental compliance review and audit, and (iii) leadership awards to recognize outstanding environmental, energy, or transportation management performance in the agency;

(d) within 30 days after the date of this order (i) designate a senior civilian officer of the United States, compensated annually in an amount at or above the amount payable at level IV of the Executive Schedule, to be responsible for implementation of this order within the agency, (ii) report such designation to the Director of the Office of Management and Budget and the Chairman of the Council on Environmental Quality, and (iii) assign the designated official the authority and duty to (A) monitor and report to the head of the agency on agency activities to carry out subsections (a) and (b) of this section, and (B) perform such other duties relating to the implementation of this order within the agency as the head of the agency deems appropriate;

(e) ensure that contracts entered into after the date of this order for contractor operation of government-owned facilities or vehicles require the contractor to comply with the provisions of this order with respect to such facilities or vehicles to the same extent as the agency would be required to comply if the agency operated the facilities or vehicles;

(f) ensure that agreements, permits, leases, licenses, or other legally-binding obligations between the agency and a tenant or concessionaire entered into after the date of this order require, to the extent the head of the agency determines appropriate, that the tenant or concessionaire take actions relating to matters within the scope of the contract that facilitate the agency's compliance with this order;

(g) provide reports on agency implementation of this order to the Chairman of the Council on such schedule and in such format as the Chairman of the Council may require; and

(h) provide information and assistance to the Director of the Office of Management and Budget, the Chairman of the Council, and the Federal Environmental Executive.

Sec. 4. *Additional Duties of the Chairman of the Council on Environmental Quality.* In implementing the policy set forth in section 1 of this order, the Chairman of the Council on Environmental Quality:

(a) (i) shall establish a Steering Committee on Strengthening Federal Environmental, Energy, and Transportation Management to advise the Director of the Office of Management and Budget and the Chairman of the Council on the performance of their functions under this order that shall consist exclusively of (A) the Federal Environmental Executive, who shall chair, convene and preside at meetings of, determine the agenda of, and direct the work of, the Steering Committee, and (B) the senior officials designated under section 3(d)(i) of this order, and (ii) may establish subcommittees of the Steering Committee, to assist the Steering Committee in developing the advice of the Steering Committee on particular subjects;

(b) may, after consultation with the Director of the Office of Management and Budget and the Steering Committee, issue instructions to implement this order, other than instructions within the authority of the Director to issue under section 5 of this order; and

(c) shall administer a presidential leadership award program to recognize exceptional and outstanding environmental, energy, or transportation management performance and excellence in agency efforts to implement this order.

Sec. 5. *Duties of the Director of the Office of Management and Budget.* In implementing the policy set forth in section 1 of this order, the Director of the Office of Management and Budget shall, after consultation with the Chairman of the Council and the Steering Committee, issue instructions to the heads of agencies concerning:

(a) periodic evaluation of agency implementation of this order;

(b) budget and appropriations matters relating to implementation of this order;

(c) implementation of section 2(d) of this order; and

(d) amendments of the Federal Acquisition Regulation as necessary to implement this order.

Sec. 6. *Duties of the Federal Environmental Executive.* A Federal Environmental Executive designated by the President shall head the Office of the Federal Environmental Executive, which shall be maintained in the Environmental Protection Agency for funding and administrative purposes. In implementing the policy set forth in section 1 of this order, the Federal Environmental Executive shall:

(a) monitor, and advise the Chairman of the Council on, performance by agencies of functions assigned by sections 2 and 3 of this order;

(b) submit a report to the President, through the Chairman of the Council, not less often than once every 2 years, on the activities of agencies to implement this order; and

(c) advise the Chairman of the Council on the Chairman's exercise of authority granted by subsection 4(c) of this order.

Sec. 7. *Limitations.* (a) This order shall apply to an agency with respect to the activities, personnel, resources, and facilities of the agency that are located within the United States. The head of an agency may provide that this order shall apply in whole or in part with respect to the activities, personnel, resources, and facilities of the agency that are not located within the United States, if the head of the agency determines that such application is in the interest of the United States.

(b) The head of an agency shall manage activities, personnel, resources, and facilities of the agency that are not located within the United States, and with respect to which the head of the agency has not made a determination under subsection (a) of this section, in a manner consistent with the policy set forth in section 1 of this order to the extent the head of the agency determines practicable.

Sec. 8. *Exemption Authority.* (a) The Director of National Intelligence may exempt an intelligence activity of the United States, and related personnel, resources, and facilities, from the provisions of this order, other than this subsection and section 10, to the extent the Director determines necessary to protect intelligence sources and methods from unauthorized disclosure.

(b) The head of an agency may exempt law enforcement activities of that agency, and related personnel, resources, and facilities, from the provisions of this order, other than this subsection and section 10, to the extent the head of an agency determines necessary to protect undercover operations from unauthorized disclosure.

(c) (i) The head of an agency may exempt law enforcement, protective, emergency response, or military tactical vehicle fleets of that agency from the provisions of this order, other than this subsection and section 10.

(ii) Heads of agencies shall manage fleets to which paragraph (i) of this subsection refers in a manner consistent with the policy set forth in section 1 of this order to the extent they determine practicable.

(d) The head of an agency may submit to the President, through the Chairman of the Council, a request for an exemption of an agency activity, and related personnel, resources, and facilities, from this order.

Sec. 9. *Definitions.* As used in this order:

(a) "agency" means an executive agency as defined in section 105 of title 5, United States Code, excluding the Government Accountability Office;

(b) "Chairman of the Council" means the Chairman of the Council on Environmental Quality, including in the Chairman's capacity as Director of the Office of Environmental Quality;

(c) "Council" means the Council on Environmental Quality;

(d) "environmental" means environmental aspects of internal agency operations and activities, including those environmental aspects related to energy and transportation functions;

(e) “greenhouse gases” means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride;

(f) “life-cycle cost-effective” means the life-cycle costs of a product, project, or measure are estimated to be equal to or less than the base case (i.e., current or standard practice or product);

(g) “new renewable sources” means sources of renewable energy placed into service after January 1, 1999;

(h) “renewable energy” means energy produced by solar, wind, biomass, landfill gas, ocean (including tidal, wave, current and thermal), geothermal, municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project;

(i) “energy intensity” means energy consumption per square foot of building space, including industrial or laboratory facilities;

(j) “Steering Committee” means the Steering Committee on Strengthening Federal Environmental, Energy, and Transportation Management established under subsection 4(b) of this order;

(k) “sustainable” means to create and maintain conditions, under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic, and other requirements of present and future generations of Americans; and

(l) “United States” when used in a geographical sense, means the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Northern Mariana Islands, and associated territorial waters and airspace.

Sec. 10. General Provisions. (a) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(c) This order is intended only to improve the internal management of the Federal Government and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees or agents, or any other person.

Sec. 11. Revocations; Conforming Provisions. (a) The following are revoked:

(i) Executive Order 13101 of September 14, 1998;

(ii) Executive Order 13123 of June 3, 1999;

(iii) Executive Order 13134 of August 12, 1999, as amended;

(iv) Executive Order 13148 of April 21, 2000; and

(v) Executive Order 13149 of April 21, 2000.

(b) In light of subsection 317(e) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107), not later than January 1 of each year through and including 2010, the Secretary of Defense shall submit to

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the Senate and the House of Representatives a report regarding progress made toward achieving the energy efficiency goals of the Department of Defense.

(c) Section 3(b)(vi) of Executive Order 13327 of February 4, 2004, is amended by striking “Executive Order 13148 of April 21, 2000” and inserting in lieu thereof “other executive orders”.

GEORGE W. BUSH

The White House,
January 24, 2007.

Executive Order 13424 of January 26, 2007

Further Amendment to Executive Order 13285, Relating to the President’s Council on Service and Civic Participation

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to extend the President’s Council on Service and Civic Participation, it is hereby ordered that Executive Order 13285 of January 29, 2003, as amended, is further amended by revising section 4(b) to read as follows: “(b) Unless further extended by the President, this order shall expire on November 30, 2008.”

GEORGE W. BUSH

The White House,
January 26, 2007.

Executive Order 13425 of February 14, 2007

Trial of Alien Unlawful Enemy Combatants by Military Commission

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Military Commissions Act of 2006 (Public Law 109–366), the Authorization for Use of Military Force (Public Law 107–40), and section 948b(b) of title 10, United States Code, it is hereby ordered as follows:

Section 1. *Establishment of Military Commissions.* There are hereby established military commissions to try alien unlawful enemy combatants for offenses triable by military commission as provided in chapter 47A of title 10.

Sec. 2. *Definitions.* As used in this order:

- (a) “unlawful enemy combatant” has the meaning provided for that term in section 948a(1) of title 10; and
- (b) “alien” means a person who is not a citizen of the United States.

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Sec. 3. *Supersedeure.* This order supersedes any provision of the President's Military Order of November 13, 2001 (66 *Fed. Reg.* 57,833), that relates to trial by military commission, specifically including:

- (a) section 4 of the Military Order; and
- (b) any requirement in section 2 of the Military Order, as it relates to trial by military commission, for a determination of:
 - (i) reason to believe specified matters; or
 - (ii) the interest of the United States.

Sec. 4. *General Provisions.* (a) This order shall be implemented in accordance with applicable law and subject to the availability of appropriations.

(b) The heads of executive departments and agencies shall provide such information and assistance to the Secretary of Defense as may be necessary to implement this order and chapter 47A of title 10.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

GEORGE W. BUSH

THE WHITE HOUSE,
February 14, 2007.

Executive Order 13426 of March 6, 2007

Establishing a Commission on Care for America's Returning Wounded Warriors and a Task Force on Returning Global War on Terror Heroes

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to provide a comprehensive review of the care provided to America's returning Global War on Terror service men and women from the time they leave the battlefield through their return to civilian life, it is hereby ordered as follows:

Section 1. *Establishment of Commission.* There is established the President's Commission on Care for America's Returning Wounded Warriors (Commission).

Sec. 2. *Membership of Commission.* The Commission shall be composed of nine members appointed by the President. The President shall designate two Co-Chairs from among the members of the Commission.

Sec. 3. *Mission of Commission.* The mission of the Commission shall be to:

- (a) examine the effectiveness of returning wounded service members' transition from deployment in support of the Global War on Terror to successful return to productive military service or civilian society, and recommend needed improvements;
- (b) evaluate the coordination, management, and adequacy of the delivery of health care, disability, traumatic injury, education, employment, and

other benefits and services to returning wounded Global War on Terror service members by Federal agencies as well as by the private sector, and recommend ways to ensure that programs provide high-quality services;

(c) (i) analyze the effectiveness of existing outreach to service members regarding such benefits and services, and service members' level of awareness of and ability to access these benefits and services, and (ii) identify ways to reduce barriers to and gaps in these benefits and services; and

(d) consult with foundations, veterans service organizations, non-profit groups, faith-based organizations, and others as appropriate, in performing the Commission's functions under subsections (a) through (c) of this section.

Sec. 4. *Administration of Commission.*

(a) The Secretary of Defense shall, to the extent permitted by law, provide administrative support and funding for the Commission. To the extent permitted by law, office space, analytical support, and staff support for the Commission shall be provided by the Department of Defense.

(b) Members of the Commission shall serve without any compensation for their work on the Commission. Members of the Commission appointed from among private citizens of the United States, while engaged in the work of the Commission, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701–5707), consistent with the availability of funds.

(c) The Co-Chairs of the Commission shall select an Executive Director to coordinate administration of the Commission.

(d) The heads of executive branch departments and agencies shall, to the extent permitted by law, provide the Commission with information as requested by the Co-Chairs.

(e) The Co-Chairs of the Commission shall convene and preside at the meetings of the Commission, determine its agenda, and direct its work.

(f) The functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App.)(Act), except for those in section 6 of that Act, that are applicable to the Commission, shall be performed by the Secretary of Defense, in accordance with the guidelines that have been issued by the Administrator of General Services.

Sec. 5. *Report of Commission.* The Commission shall report its recommendations to the President through the Secretary of Defense and the Secretary of Veterans Affairs. The Commission shall issue a final report by June 30, 2007, unless the Co-Chairs provide written notice to the President that an extension is necessary, in which case the Commission shall issue the final report by July 31, 2007.

Sec. 6. *Termination of Commission.* The Commission shall terminate 30 days after submitting its final report, unless extended by the President prior to that date.

Sec. 7. *Establishment of Task Force.* The Secretary of Veterans Affairs (Secretary) shall establish within the Department of Veterans Affairs for administrative purposes only an Interagency Task Force on Returning Global War on Terror Heroes (Task Force).

Sec. 8. *Membership and Operation of Task Force.* The Task Force shall consist exclusively of the following members, or their designees who shall be at the Under Secretary level (or its equivalent) or higher:

- (a) the Secretary of Veterans Affairs, who shall serve as Chair;
- (b) the Secretary of Defense;
- (c) the Secretary of Labor;
- (d) the Secretary of Health and Human Services;
- (e) the Secretary of Housing and Urban Development;
- (f) the Secretary of Education;
- (g) the Director of the Office of Management and Budget;
- (h) the Administrator of the Small Business Administration; and
- (i) other officers or employees of the United States, as determined by the Secretary.

The Secretary or the Secretary's designee shall convene and preside at meetings of the Task Force and direct its work. The Secretary shall designate an official of the Department of Veterans Affairs to serve as the Executive Secretary of the Task Force, and the Executive Secretary shall head any staff assigned to the Task Force.

Sec. 9. *Mission of Task Force.* The mission of the Task Force shall be to:

- (a) identify and examine existing Federal services that currently are provided to returning Global War on Terror service members;
- (b) identify existing gaps in such services;
- (c) seek recommendations from appropriate Federal agencies on ways to fill those gaps as effectively and expeditiously as possible using existing resources; and
- (d) (i) ensure that in providing services to these service members, appropriate Federal agencies are communicating and cooperating effectively, and (ii) facilitate the fostering of agency communications and cooperation through informal and formal means, as appropriate.

Sec. 10. *Administration of Task Force.* The Secretary of Veterans Affairs shall, to the extent permitted by law, provide administrative support and funding for the Task Force.

Sec. 11. *Action Plan of Task Force.* Consistent with applicable law, the Task Force shall outline a Government-wide action plan that identifies existing Federal services for returning Global War on Terror service men and women and that ensures the provision of such services to those service members as effectively and expeditiously as possible. The Task Force shall submit the action plan to the President within 45 days of the date of this order.

Sec. 12. *Termination of Task Force.* The Secretary, with the approval of the President, shall terminate the Task Force upon the completion of its duties.

Sec. 13. *General Provisions.*

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(a) Nothing in this order shall be construed to impair or otherwise affect (i) authority granted by law to an agency or the head thereof, or (ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, entities, officers, employees, agents, or any other person.

GEORGE W. BUSH

The White House,
March 6, 2007.

Executive Order 13427 of March 7, 2007

Extending Privileges and Immunities to the Permanent Observer Mission of the Holy See to the United Nations

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7(b) of the Department of State Authorities Act of 2006 (22 U.S.C. 2881), I hereby extend to the Permanent Observer Mission of the Holy See to the United Nations in New York, and to its members, the privileges and immunities enjoyed by the diplomatic missions of member states to the United Nations, and members of such missions, subject to corresponding conditions and obligations.

This extension of privileges and immunities is not intended to abridge in any respect privileges or immunities that the Permanent Observer Mission of the Holy See to the United Nations in New York and its members otherwise may have acquired or may acquire by law.

GEORGE W. BUSH

The White House,
March 7, 2007.

Executive Order 13428 of April 2, 2007

Renaming a National Forest in the Commonwealth of Puerto Rico

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 1 of the Act of June 4, 1897 (16 U.S.C. 473) and section 1 of the Act of July 1, 1902 (48 U.S.C. 746), and to rename the Caribbean National Forest in the Commonwealth of Puerto Rico, it is hereby ordered as follows:

Section 1. The Caribbean National Forest in the Commonwealth of Puerto Rico is hereby renamed the “El Yunque National Forest.”

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Sec. 2. Previous references to the Caribbean National Forest in Executive Order 7059–A of June 4, 1935, and Executive Order 10992 of February 9, 1962, shall, for all purposes hereafter, be deemed references to the “El Yunque National Forest.”

Sec. 3. This order shall be implemented in accordance with applicable law and subject to the availability of appropriations.

Sec. 4. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, agencies, entities, officers, employees, or agents thereof, or any other person.

GEORGE W. BUSH

The White House,
April 2, 2007.

Executive Order 13429 of April 4, 2007

Establishing an Emergency Board To Investigate a Dispute Between Metro-North Railroad and Its Maintenance of Way Employees Represented by the International Brotherhood of Teamsters

A dispute exists between Metro-North Railroad and its maintenance of way employees represented by the International Brotherhood of Teamsters.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended, 45 U.S.C. 151–188 (the “Act”).

A first emergency board to investigate and report on this dispute and disputes of other employees represented by other labor organizations was established on December 7, 2006, by Executive Order 13417 of December 6, 2006. The emergency board terminated upon issuance of its report. Subsequently, its recommendations were not accepted by the parties.

A party empowered by the Act has requested that the President establish a second emergency board pursuant to section 9A of the Act (45 U.S.C. 159a).

Section 9A(e) of the Act provides that the President, upon such request, shall appoint a second emergency board to investigate and report on the dispute.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States, including section 9A of the Act, it is hereby ordered as follows:

Section 1. *Establishment of Emergency Board (Board).* There is established, effective April 6, 2007, a Board of three members to be appointed by the President to investigate and report on this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The Board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* Within 30 days after the creation of the Board, the parties to the dispute shall submit to the Board final offers for settlement of the dispute. Within 30 days after the submission of final offers for settlement of the dispute, the Board shall submit a report to the President setting forth its selection of the most reasonable offer.

Sec. 3. *Maintaining Conditions.* As provided by section 9A(h) of the Act, from the time a request to establish a second emergency board is made until 60 days after the Board submits its report to the President, the parties to the controversy shall make no change in the conditions out of which the dispute arose except by agreement of the parties.

Sec. 4. *Records Maintenance.* The records and files of the Board are records of the Office of the President and upon the Board's termination shall be maintained in the physical custody of the National Mediation Board.

Sec. 5. *Expiration.* The Board shall terminate upon the submission of the report provided for in section 2 of this order.

GEORGE W. BUSH

The White House,
April 4, 2007.

Executive Order 13430 of April 18, 2007

2007 Amendments to the Manual for Courts-Martial, United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10, United States Code (Uniform Code of Military Justice, 10 U.S.C. 801–946), and in order to prescribe amendments to the Manual for Courts-Martial, United States, prescribed by Executive Order 12473 of April 13, 1984, as amended, it is hereby ordered as follows:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 703(b)(1) is amended by adding at the end the following new sentences:

“With the consent of both the accused and Government, the military judge may authorize any witness to testify via remote means. Over a party's objection, the military judge may authorize any witness to testify on interlocutory questions via remote means or similar technology if the practical difficulties of producing the witness outweigh the significance of the witness' personal appearance (although such testimony will not be admissible over the accused's objection as evidence on the ultimate issue of guilt). Factors to be considered include, but are not limited to, the costs of producing the witness; the timing of the request for production of the witness; the potential delay in the interlocutory proceeding that may be caused by the production of the witness; the willingness of the witness to testify in person; the likelihood of significant interference

with military operational deployment, mission accomplishment, or essential training; and, for child witnesses, the traumatic effect of providing in-court testimony.”

(b) R.C.M. 804 is amended by redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively, and inserting the following new paragraph (b):

“(b) *Presence by remote means.* If authorized by the regulations of the Secretary concerned, the military judge may order the use of audiovisual technology, such as videoteleconferencing technology, between the parties and the military judge for purposes of Article 39(a) sessions. Use of such audiovisual technology will satisfy the “presence” requirement of the accused only when the accused has a defense counsel physically present at his location. Such technology may include two or more remote sites as long as all parties can see and hear each other.”

(c) R.C.M. 804(c)(2) is redesignated as R.C.M. 804(d)(2) and amended to read as follows:

“(2) *Procedure.* The accused’s absence will be conditional upon his being able to view the witness’ testimony from a remote location. Normally, transmission of the testimony will include a system that will transmit the accused’s image and voice into the courtroom from a remote location as well as transmission of the child’s testimony from the courtroom to the accused’s location. A one-way transmission may be used if deemed necessary by the military judge. The accused will also be provided private, contemporaneous communication with his counsel. The procedures described herein shall be employed unless the accused has made a knowing and affirmative waiver of these procedures.”

(d) R.C.M. 805(a) is amended by adding at the end the following new sentence:

“If authorized by regulations of the Secretary concerned, for purposes of Article 39(a) sessions solely, the presence of the military judge at Article 39(a) sessions may be satisfied by the use of audiovisual technology, such as videoteleconferencing technology.”

(e) R.C.M. 805(c) is amended by adding at the end the following new sentences:

“If authorized by regulations of the Secretary concerned, for purposes of Article 39(a) sessions solely, the presence of counsel at Article 39(a) sessions may be satisfied by the use of audiovisual technology, such as videoteleconferencing technology. At least one qualified defense counsel shall be physically present with the accused.”

(f) R.C.M. 914A is amended by deleting the third sentence of paragraph (a).

(g) R.C.M. 914A is further amended by redesignating paragraph (b) as paragraph (c) and inserting the following new paragraph (b):

“(b) *Definition.* As used in this rule, “remote live testimony” includes, but is not limited to, testimony by videoteleconference, closed circuit television, or similar technology.”

(h) New Rule R.C.M. 914B is inserted after R.C.M. 914A:

“Rule 914B. Use of remote testimony.

(a) *General procedures.* The military judge shall determine the procedures used to take testimony via remote means. At a minimum, all parties shall be able to hear each other, those in attendance at the remote site shall be identified, and the accused shall be permitted private, contemporaneous communication with his counsel.

(b) *Definition.* As used in this rule, testimony via “remote means” includes, but is not limited to, testimony by videoteleconference, closed circuit television, telephone, or similar technology.”

(i) R.C.M. 1001(e)(2)(D) is amended by deleting the “or” before “former testimony” and inserting “, or testimony by remote means” after “former testimony.”

Sec. 2. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 4.c.(6) is amended by redesignating paragraph (f) as paragraph (g) and inserting the following new paragraph (f):

“(f) *Article 119a-attempting to kill an unborn child*”

(b) Paragraph 12a is amended by replacing the word “Transportation” with the words “Homeland Security”.

(c) Paragraph 35a is amended to read as follows:

“(a) Any person subject to this chapter who —

(1) operates or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance described in section 912a(b) of this title (Article 112a(b)); or

(2) operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person’s blood or breath is equal to or exceeds the applicable limit under subsection (b), shall be punished as a court-martial may direct.

(b)(1) For purposes of subsection (a), the applicable limit on the alcohol concentration in a person’s blood or breath is as follows:

(A) In the case of the operation or control of a vehicle, aircraft, or vessel in the United States, such limit is the lesser of —

(i) the blood alcohol content limit under the law of the State in which the conduct occurred, except as may be provided under paragraph (2) for conduct on a military installation that is in more than one State; or

(ii) the blood alcohol content limit specified in paragraph (3).

(B) In the case of the operation or control of a vehicle, aircraft, or vessel outside the United States, the applicable blood alcohol content limit is the blood alcohol content limit specified in paragraph (3) or such lower limit as the Secretary of Defense may by regulation prescribe.

(2) In the case of a military installation that is in more than one State, if those States have different blood alcohol content limits under their respective State laws, the Secretary may select one such blood alcohol content limit to apply uniformly on that installation.

(3) For purposes of paragraph (1), the blood alcohol content limit with respect to alcohol concentration in a person's blood is 0.10 grams of alcohol per 100 milliliters of blood and with respect to alcohol concentration in a person's breath is 0.10 grams of alcohol per 210 liters of breath, as shown by chemical analysis.

(4) In this subsection:

(A) The term "blood alcohol content limit" means the amount of alcohol concentration in a person's blood or breath at which operation or control of a vehicle, aircraft, or vessel is prohibited.

(B) The term "United States" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and the term "State" includes each of those jurisdictions.

(d) Paragraph 35b(2)(c) is amended to read as follows:

"(c) the alcohol concentration in the accused's blood or breath equaled to or exceeded the applicable limit under subparagraph (b) of paragraph 35a. [NOTE: If injury resulted add the following element]"

(e) Para 35f is amended to read as follows:

"In that _____ (personal jurisdiction data), did (at/onboard location)(subject matter jurisdiction data, if required), on or about _____ 20____, (in the motor pool area)(near the Officer's Club)(at the intersection of _____ and _____)(while in the Gulf of Mexico)(while in flight over North America) physically control [a vehicle, to wit: (a truck)(a passenger car)(_____)] [an aircraft, to wit: (an AH 64 helicopter)(an F 14 A fighter)(a KC 135 tanker)(_____)] [a vessel, to wit: (the aircraft carrier USS)(the Coast Cutter)(_____)], [while drunk][while impaired by _____][while the alcohol concentration in his (blood or breath equaled or exceeded the applicable limit under subparagraph (b) of paragraph 35a) as shown by chemical analysis][in a (reckless)(wanton) manner by (attempting to pass another vehicle on a sharp curve)(by ordering that the aircraft be flown below the authorized altitude)][and did thereby cause said (vehicle)(aircraft)(vessel) to (strike and)(injure _____)]."

(f) By inserting the new paragraph 44a:

"44a. Article 119a—Death or injury of an unborn child

a. *Text.*

(a)(1) Any person subject to this chapter who engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365 of title 18 to, a child who is in utero at the time the conduct takes place, is guilty of a separate offense under this section and shall, upon conviction, be punished by such punishment, other than death, as a court-martial may direct, which shall be consistent with the punishments prescribed by the President for that conduct had that injury or death occurred to the unborn child's mother.

(2) An offense under this section does not require proof that —

(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

(ii) the accused intended to cause the death of, or bodily injury to, the unborn child.

(3) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall, instead of being punished under paragraph (1), be punished as provided under sections 880, 918, and 919(a) of this title (articles 80, 118, and 119(a)) for intentionally killing or attempting to kill a human being.

(4) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.

(b) The provisions referred to in subsection (a) are sections 918, 919(a), 919(b)(2), 920(a), 922, 924, 926, and 928 of this title (articles 118, 119(a), 119(b)(2), 120(a), 122, 124, 126, and 128).

(c) Nothing in this section shall be construed to permit the prosecution

(1) of any person authorized by state or federal law to perform abortions for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

(2) of any person for any medical treatment of the pregnant woman or her unborn child; or

(3) of any woman with respect to her unborn child.

(d) As used in this section, the term “unborn child” means a child in utero, and the term “child in utero” or “child who is in utero” means a member of the species *homo sapiens*, at any stage of development, who is carried in the womb.

b. *Elements.*

(1) *Injuring an unborn child.*

(a) That the accused was engaged in the [(murder (article 118)), (voluntary manslaughter (article 119(a))), (involuntary manslaughter (article 119(b)(2))), (rape (article 120)), (robbery (article 122)), (maiming (article 124)), (assault (article 128)), of] or [burning or setting afire, as arson (article 126), of (a dwelling inhabited by) (a structure or property (known to be occupied by) (belonging to))]] a woman;

(b) That the woman was then pregnant; and

(c) That the accused thereby caused bodily injury to the unborn child of that woman.

(2) *Killing an unborn child.*

(a) That the accused was engaged in the [(murder (article 118)), (voluntary manslaughter (article 119(a))), (involuntary manslaughter (article 119(b)(2))), (rape (article 120)), (robbery (article 122)), (maiming (article 124)), (assault (article 128)), of] or [burning or setting afire, as arson (article 126), of (a dwelling inhabited by) (a structure or property known to be occupied by) (belong to))]] a woman;

(b) That the woman was then pregnant; and

(c) That the accused thereby caused the death of the unborn child of that woman.

(3) *Attempting to kill an unborn child.*

(a) That the accused was engaged in the [(murder (article 118)), (voluntary manslaughter (article 119(a))), (involuntary manslaughter (article 119(b)(2))), (rape (article 120)), (robbery (article 122)), (maiming (article 124)), (assault (article 128)), of] or [burning or setting afire, as arson (article 126), of (a dwelling inhabited by) (a structure or property (known to be occupied by) (belonging to)))] a woman;

(b) That the woman was then pregnant; and

(c) That the accused thereby intended and attempted to kill the unborn child of that woman.

(4) *Intentionally killing an unborn child.*

(a) That the accused was engaged in the [(murder (article 118)), (voluntary manslaughter (article 119(a))), (involuntary manslaughter (article 119(b)(2))), (rape (article 120)), (robbery (article 122)), (maiming (article 124)), (assault (article 128)), of] or [burning or setting afire, as arson (article 126), of (a dwelling inhabited by) (a structure or property (known to be occupied by) (belonging to)))] a woman;

(b) That the woman was then pregnant; and

(c) That the accused thereby intentionally killed the unborn child of that woman.

c. *Explanation.*

(1) *Nature of offense.* This article makes it a separate, punishable crime to cause the death of or bodily injury to an unborn child while engaged in arson (article 126, UCMJ); murder (article 118, UCMJ); voluntary manslaughter (article 119(a), UCMJ); involuntary manslaughter (article 119(b)(2), UCMJ); rape (article 120(a), UCMJ); robbery (article 122, UCMJ); maiming (article 124, UCMJ); or assault (article 128, UCMJ) against a pregnant woman. For all underlying offenses, except arson, this article requires that the victim of the underlying offense be the pregnant mother. For purposes of arson, the pregnant mother must have some nexus to the arson such that she sustained some “bodily injury” due to the arson. For the purposes of this article the term “woman” means a female of any age. This article does not permit the prosecution of any —

(a) person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

(b) person for any medical treatment of the pregnant woman or her unborn child; or

(c) woman with respect to her unborn child.

(2) The offenses of “injuring an unborn child” and “killing an unborn child” do not require proof that —

(a) the person engaging in the conduct (the accused) had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

(b) the accused intended to cause the death of, or bodily injury to, the unborn child.

(3) The offense of “attempting to kill an unborn child” requires that the accused intended by his conduct to cause the death of the unborn child (See paragraph b(3)(c) above).

(4) *Bodily injury*. For the purpose of this offense, the term “bodily injury” is that which is provided by section 1365 of title 18, to wit: a cut, abrasion, bruise, burn, or disfigurement; physical pain; illness; impairment of the function of a bodily member, organ, or mental faculty; or any other injury to the body, no matter how temporary.

(5) *Unborn child*. “Unborn child” means a child in utero or a member of the species homo sapiens who is carried in the womb, at any stage of development, from conception to birth.

d. *Lesser included offenses*.

(1) *Killing an unborn child*. Article 119a—injuring an unborn child

(2) *Intentionally killing an unborn child*.

(a) Article 119a—killing an unborn child

(b) Article 119a—injuring an unborn child

(c) Article 119a—attempts (attempting to kill an unborn child)

e. *Maximum punishment*.

The maximum punishment for (1) *Injuring an unborn child*; (2) *Killing an unborn child*; (3) *Attempting to kill an unborn child*; or (4) *Intentionally killing an unborn child* is such punishment, other than death, as a court-martial may direct, but shall be consistent with the punishment had the bodily injury, death, attempt to kill, or intentional killing occurred to the unborn child’s mother.

f. *Sample specifications*.

(1) *Injuring an unborn child*.

In that _____ (personal jurisdiction data), did (at/on board—location), (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause bodily injury to the unborn child of _____, a pregnant woman, by engaging in the [(murder) (voluntary manslaughter) (involuntary manslaughter) (rape) (robbery) (maiming) (assault) of] [(burning) (setting afire) of (a dwelling inhabited by) (a structure or property known to (be occupied by) (belong to)))] that woman.

(2) *Killing an unborn child*.

In that _____ (personal jurisdiction data), did (at/on board—location), (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause the death of the unborn child of _____, a pregnant woman, by engaging in the [(murder) (voluntary manslaughter) (involuntary manslaughter) (rape) (robbery) (maiming) (assault) of] [(burning) (setting afire) of (a dwelling inhabited by) (a structure or property known to (be occupied by) (belong to)))] that woman.

(3) *Attempting to kill an unborn child*.

In that _____ (personal jurisdiction data), did (at/on board—location), (subject-matter jurisdiction data, if required), on or about _____ 20 _____, attempt to kill the unborn child of _____, a pregnant woman, by engaging in the [(murder) (voluntary manslaughter) (involuntary manslaughter) (rape) (robbery) (maiming) (assault) of] [(burning) (setting afire) of (a dwelling inhabited by) (a structure or property known to (be occupied by) (belong to))] that woman.

(4) *Intentionally killing an unborn child.*

In that _____ (personal jurisdiction data), did (at/on board—location), (subject-matter jurisdiction data, if required), on or about _____ 20 _____, intentionally kill the unborn child of _____, a pregnant woman, by engaging in the [(murder) (voluntary manslaughter) (involuntary manslaughter) (rape) (robbery) (maiming) (assault) of] [(burning) (setting afire) of (a dwelling inhabited by) (a structure or property known to (be occupied by) (belong to))] that woman.”

(g) By inserting the new paragraph 45a to read:

“45a. Article 120a Stalking

a. *Text*

(a) Any person subject to this section:

(1) who wrongfully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily harm, including sexual assault, to himself or herself or a member of his or her immediate family;

(2) who has knowledge, or should have knowledge, that the specific person will be placed in reasonable fear of death or bodily harm, including sexual assault, to himself or herself or a member of his or her immediate family; and

(3) whose acts induce reasonable fear in the specific person of death or bodily harm, including sexual assault, to himself or herself or to a member of his or her immediate family; is guilty of stalking and shall be punished as a court-martial may direct.

(b) In this section:

(1) The term “course of conduct” means:

(A) a repeated maintenance of visual or physical proximity to a specific person; or

(B) a repeated conveyance of verbal threat, written threats, or threats implied by conduct, or a combination of such threats, directed at or towards a specific person.

(2) The term “repeated,” with respect to conduct, means two or more occasions of such conduct.

(3) The term “immediate family,” in the case of a specific person, means a spouse, parent, child, or sibling of the person, or any other family member, relative, or intimate partner of the person who regularly resides in the household of the person or who within the six months preceding

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the commencement of the course of conduct regularly resided in the household of the person.

b. *Elements.*

(1) That the accused wrongfully engaged in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily harm to himself or herself or a member of his or her immediate family;

(2) That the accused had knowledge, or should have had knowledge, that the specific person would be placed in reasonable fear of death or bodily harm to himself or herself or a member of his or her immediate family; and

(3) That the accused's acts induced reasonable fear in the specific person of death or bodily harm to himself or herself or to a member of his or her immediate family.

c. *Explanation.* See Paragraph 54.c(1)(a) for an explanation of "bodily harm".

d. *Lesser included offenses.* Article 80—attempts.

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

f. *Sample Specification.*

In that _____ (personal jurisdiction data), who (knew)(should have known) that _____ would be placed in reasonable fear of (death)(bodily harm) to (himself) (herself) (_____, a member of his or her immediate family) did (at/on board—location), (subject-matter jurisdiction data, if required), (on or about _____ 20____)(from about _____ to about _____ 20____), wrongfully engage in a course of conduct directed at _____, to wit: _____ thereby inducing in _____, a reasonable fear of (death)(bodily harm) to (himself)(herself) (_____, a member of his or her immediate family)."

Sec. 3. Part V of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 5.c.(8) is amended by replacing the word "foreign" with the word "hardship."

(b) Paragraph 7(e) is amended by replacing the word "Transportation" with the words "Homeland Security".

Sec. 4. Part IV of the Manual for Courts-Martial, United States, is amended by replacing the word "Transportation" with the words "Homeland Security."

Sec. 5. These amendments shall take effect 30 days from the date of this order.

(a) Nothing in these amendments shall be construed to make punishable any act done or omitted prior to the effective date of this order that was not punishable when done or omitted.

(b) Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceedings, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior

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to the effective date of this order, and any such nonjudicial punishment, restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

GEORGE W. BUSH

The White House,
April 18, 2007.

Executive Order 13431 of May 8, 2007

**Establishment of Temporary Organization To Facilitate
United States Government Assistance for Transition in Iraq**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 202 of the Revised Statutes (22 U.S.C. 2656) and section 3161 of title 5, United States Code, it is hereby ordered as follows:

Section 1. *Establishment.* There is established within the Department of State, in accordance with section 3161 of title 5, United States Code, a temporary organization to be known as the Iraq Transition Assistance Office (ITAO).

Sec. 2. *Purpose of the Temporary Organization.* The purpose of the ITAO shall be to perform the specific project of supporting executive departments and agencies in concluding remaining large infrastructure projects expeditiously in Iraq, in facilitating Iraq's transition to self-sufficiency, and in maintaining an effective diplomatic presence in Iraq.

Sec. 3. *Functions of the Temporary Organization.* In carrying out its purpose set forth in section 2, the ITAO shall:

- (a) support executive departments and agencies in Iraq in their implementation of United States Government foreign assistance in Iraq;
- (b) continue coordination, oversight, and reporting concerning remaining Iraq Relief and Reconstruction Fund (IRRF) monies;
- (c) assume the functions assigned to the Iraq Reconstruction Management Office (IRMO) remaining as of the date of this order; and
- (d) perform such other functions related to the specific project set forth in section 2 as the Secretary of State (Secretary) may assign.

Sec. 4. *Personnel and Administration.* (a) The ITAO shall be headed by a Director selected by the Secretary.

(b) The Secretary shall transfer from the IRMO to the ITAO the personnel, assets, liabilities, and records of the IRMO.

Sec. 5. *General Provisions.* (a) This order shall be implemented in accordance with applicable law, subject to the availability of appropriations, and consistent with presidential guidance.

(b) This order is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by

any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

(c) The ITAO shall terminate at the end of the maximum period permitted by section 3161(a)(1) of title 5, United States Code, unless sooner terminated by the Secretary.

GEORGE W. BUSH

The White House,
May 8, 2007.

Executive Order 13432 of May 14, 2007

**Cooperation Among Agencies in Protecting the Environment
With Respect to Greenhouse Gas Emissions From Motor
Vehicles, Nonroad Vehicles, and Nonroad Engines**

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. It is the policy of the United States to ensure the coordinated and effective exercise of the authorities of the President and the heads of the Department of Transportation, the Department of Energy, and the Environmental Protection Agency to protect the environment with respect to greenhouse gas emissions from motor vehicles, nonroad vehicles, and nonroad engines, in a manner consistent with sound science, analysis of benefits and costs, public safety, and economic growth.

Sec. 2. Definitions. As used in this order:

(a) “agencies” refers to the Department of Transportation, the Department of Energy, and the Environmental Protection Agency, and all units thereof, and “agency” refers to any of them;

(b) “alternative fuels” has the meaning specified for that term in section 301(2) of the Energy Policy Act of 1992 (42 U.S.C. 13211(2));

(c) “authorities” include the Clean Air Act (42 U.S.C. 7401–7671q), the Energy Policy Act of 1992 (Public Law 102–486), the Energy Policy Act of 2005 (Public Law 109–58), the Energy Policy and Conservation Act (Public Law 94–163), and any other current or future laws or regulations that may authorize or require any of the agencies to take regulatory action that directly or indirectly affects emissions of greenhouse gases from motor vehicles;

(d) “greenhouse gases” has the meaning specified for that term in Executive Order 13423 of January 24, 2007;

(e) “motor vehicle” has the meaning specified for that term in section 216(2) of the Clean Air Act (42 U.S.C. 7550(2));

(f) “nonroad engine” has the meaning specified for that term in section 216(10) of the Clean Air Act (42 U.S.C. 7550(10));

(g) “nonroad vehicle” has the meaning specified for that term in section 216(11) of the Clean Air Act (42 U.S.C. 7550(11));

(h) “regulation” has the meaning specified for that term in section 3(d) of Executive Order 12866 of September 30, 1993, as amended (Executive Order 12866); and

(i) “regulatory action” has the meaning specified for that term in section 3(e) of Executive Order 12866.

Sec. 3. *Coordination Among the Agencies.* In carrying out the policy set forth in section 1 of this order, the head of an agency undertaking a regulatory action that can reasonably be expected to directly regulate emissions, or to substantially and predictably affect emissions, of greenhouse gases from motor vehicles, nonroad vehicles, nonroad engines, or the use of motor vehicle fuels, including alternative fuels, shall:

(a) undertake such a regulatory action, to the maximum extent permitted by law and determined by the head of the agency to be practicable, jointly with the other agencies;

(b) in undertaking such a regulatory action, consider, in accordance with applicable law, information and recommendations provided by the other agencies;

(c) in undertaking such a regulatory action, exercise authority vested by law in the head of such agency effectively, in a manner consistent with the effective exercise by the heads of the other agencies of the authority vested in them by law; and

(d) obtain, to the extent permitted by law, concurrence or other views from the heads of the other agencies during the development and preparation of the regulatory action and prior to any key decision points during that development and preparation process, and in no event later than 30 days prior to publication of such action.

Sec. 4. *Duties of the Heads of Agencies.* (a) To implement this order, the head of each agency shall:

(1) designate appropriate personnel within the agency to (i) direct the agency’s implementation of this order, (ii) ensure that the agency keeps the other agencies and the Office of Management and Budget informed of the agency regulatory actions to which section 3 refers, and (iii) coordinate such actions with the agencies;

(2) in coordination as appropriate with the Committee on Climate Change Science and Technology, continue to conduct and share research designed to advance technologies to further the policy set forth in section 1 of this order;

(3) facilitate the sharing of personnel and the sharing of information among the agencies to further the policy set forth in section 1 of this order;

(4) coordinate with the other agencies to avoid duplication of requests to the public for information from the public in the course of undertaking such regulatory action, consistent with the Paperwork Reduction Act (44 U.S.C. 3501*et seq.*); and

(5) consult with the Secretary of Agriculture whenever a regulatory action will have a significant effect on agriculture related to the production or use of ethanol, biodiesel, or other renewable fuels, including actions undertaken in whole or in part based on authority or requirements in title XV

of the Energy Policy Act of 2005, or the amendments made by such title, or when otherwise appropriate or required by law.

(b) To implement this order, the heads of the agencies acting jointly may allocate as appropriate among the agencies administrative responsibilities relating to regulatory actions to which section 3 refers, such as publication of notices in the **Federal Register** and receipt of comments in response to notices.

Sec. 5. Duties of the Director of the Office of Management and Budget and the Chairman of the Council on Environmental Quality. (a) The Director of the Office of Management and Budget, with such assistance from the Chairman of the Council on Environmental Quality as the Director may require, shall monitor the implementation of this order by the heads of the agencies and shall report thereon to the President from time to time, and not less often than semiannually, with any recommendations of the Director for strengthening the implementation of this order.

(b) To implement this order and further the policy set forth in section 1, the Director of the Office of Management and Budget may require the heads of the agencies to submit reports to, and coordinate with, such Office on matters related to this order.

Sec. 6. General Provisions. (a) This order shall be implemented in accordance with applicable law and subject to the availability of appropriations.

(b) This order shall not be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, and legislative proposals.

(c) This order is not intended to, and does not, create any right, benefit or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH

The White House,
May 14, 2007.

Executive Order 13433 of May 16, 2007

Protecting American Taxpayers From Payment of Contingency Fees

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. Policy. To help ensure the integrity and effective supervision of the legal and expert witness services provided to or on behalf of the United States, it is the policy of the United States that organizations or individuals that provide such services to or on behalf of the United States shall be

compensated in amounts that are reasonable, not contingent upon the outcome of litigation or other proceedings, and established according to criteria set in advance of performance of the services, except when otherwise required by law.

Sec. 2. Duties of Agency Heads. (a) Heads of agencies shall implement within their respective agencies the policy set forth in section 1, consistent with such instructions as the Attorney General may prescribe.

(b) After the date of this order, no agency shall enter into a contingency fee agreement for legal or expert witness services addressed by section 1 of this order, unless the Attorney General has determined that the agency's entry into the agreement is required by law.

(c) Within 90 days after the date of this order, the head of each agency shall notify the Attorney General and the Director of the Office of Management and Budget of any contingency fee agreements for services addressed by section 1 of this order that are in effect as of the date of this order.

Sec. 3. Definitions. For purposes of this order:

(a) The term "agency" means an executive agency as defined in section 105 of title 5, United States Code, and the United States Postal Service and the Postal Regulatory Commission, but shall exclude the Government Accountability Office and elements of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 as amended (50 U.S.C. 401a(4))).

(b) The term "contingency fee agreement" means a contract or other agreement to provide services under which the amount or the payment of the fee for the services is contingent in whole or in part on the outcome of the matter for which the services were obtained. The term does not include:

- (i) qualified tax collection contracts defined in section 6306 of title 26, United States Code, and
- (ii) contracts described in sections 3711 and 3718 of title 31, United States Code.

Sec. 4. General Provisions. (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect:

- (i) authority granted by law to an agency or the head thereof; or
- (ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(c) This order is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH

The White House,

May 16, 2007.

Executive Order 13434 of May 17, 2007

National Security Professional Development

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to enhance the national security, it is hereby ordered as follows:

Section 1. Policy. In order to enhance the national security of the United States, including preventing, protecting against, responding to, and recovering from natural and manmade disasters, such as acts of terrorism, it is the policy of the United States to promote the education, training, and experience of current and future professionals in national security positions (security professionals) in executive departments and agencies (agencies).

Sec. 2. National Strategy for Professional Development. Not later than 60 days after the date of this order, the Assistant to the President for Homeland Security and Counterterrorism (APHS/CT), in coordination with the Assistant to the President for National Security Affairs (APNSA), shall submit to the President for approval a National Strategy for the Development of Security Professionals (National Strategy). The National Strategy shall set forth a framework that will provide to security professionals access to integrated education, training, and professional experience opportunities for the purpose of enhancing their mission-related knowledge, skills, and experience and thereby improve their capability to safeguard the security of the Nation. Such opportunities shall be provided across organizations, levels of government, and incident management disciplines, as appropriate.

Sec. 3. Executive Steering Committee. (a) There is established the Security Professional Development Executive Steering Committee (Steering Committee), which shall facilitate the implementation of the National Strategy. Not later than 120 days after the approval of the National Strategy by the President, the Steering Committee shall submit to the APHS/CT and the APNSA an implementation plan (plan) for the National Strategy, and annually thereafter shall submit to the APHS/CT and the APNSA a status report on the implementation of the plan and any recommendations for changes to the National Strategy.

(b) The Steering Committee shall consist exclusively of the following members (or their designees who shall be full-time officers or employees of the members' respective agencies):

(i) the Director of the Office of Personnel Management, who shall serve as Chair;

(ii) the Secretary of State;

(iii) the Secretary of the Treasury;

(iv) the Secretary of Defense;

(v) the Attorney General;

(vi) the Secretary of Agriculture;

(vii) the Secretary of Labor;

(viii) the Secretary of Health and Human Services;

(ix) the Secretary of Housing and Urban Development;

- (x) the Secretary of Transportation;
 - (xi) the Secretary of Energy;
 - (xii) the Secretary of Education;
 - (xiii) the Secretary of Homeland Security;
 - (xiv) the Director of National Intelligence;
 - (xv) the Director of the Office of Management and Budget; and
 - (xvi) such other officers of the United States as the Chair of the Steering Committee may designate from time to time.
- (c) The Steering Committee shall coordinate, to the maximum extent practicable, national security professional development programs and guidance issued by the heads of agencies in order to ensure an integrated approach to such programs.
- (d) The Chair of the Steering Committee shall convene and preside at the meetings of the Steering Committee, set its agenda, coordinate its work, and, as appropriate to deal with particular subject matters, establish subcommittees of the Steering Committee that shall consist exclusively of members of the Steering Committee (or their designees under subsection (b) of this section), and such other full-time or permanent part-time officers or employees of the Federal Government as the Chair may designate.

Sec. 4. *Responsibilities.* The head of each agency with national security functions shall:

- (a) identify and enhance existing national security professional development programs and infrastructure, and establish new programs as necessary, in order to fulfill their respective missions to educate, train, and employ security professionals consistent with the National Strategy and, to the maximum extent practicable, the plan and related guidance from the Steering Committee; and
- (b) cooperate with the Steering Committee and provide such information, support, and assistance as the Chair of the Steering Committee may request from time to time.

Sec. 5. *Additional Responsibilities.* (a) Except for employees excluded by law, and subject to subsections (b), (c), and (d) of this section, the Director of the Office of Personnel Management, after consultation with the Steering Committee, shall:

- (i) consistent with applicable merit-based hiring and advancement principles, lead the establishment of a national security professional development program in accordance with the National Strategy and the plan that provides for interagency and intergovernmental assignments and fellowship opportunities and provides for professional development guidelines for career advancement; and
- (ii) issue to agencies rules and guidance or apply existing rules and guidance relating to the establishment of national security professional development programs to implement the National Strategy and the plan;

(b) The Secretary of Defense shall issue rules or guidance on professional development programs for Department of Defense military personnel, including interagency and intergovernmental assignments and fellowship opportunities, to implement the National Strategy and the plan, as appropriate, and shall coordinate such programs, to the maximum extent practicable, with the Steering Committee;

(c) The Secretary of State shall issue rules or guidance on national security professional development programs for the Foreign Service, including interagency and intergovernmental exchanges and fellowship opportunities, to implement the National Strategy and the plan, as appropriate, and shall coordinate such programs, to the maximum extent practicable, with the Steering Committee;

(d) The Director of National Intelligence, in coordination with the heads of agencies of which elements of the intelligence community are a part, shall issue rules or guidance on national security professional development programs for the intelligence community, including interagency and intergovernmental assignments and fellowship opportunities, to implement the National Strategy and the plan, as appropriate, and shall coordinate such programs, to the maximum extent practicable, with the Steering Committee; and

(e) The Secretary of Homeland Security shall develop a program to provide to Federal, State, local, and tribal government officials education in disaster preparedness, response, and recovery plans and authorities, and training in crisis decision-making skills, consistent with applicable presidential guidance.

Sec. 6. General Provisions. This order:

(a) shall be implemented consistent with applicable law and authorities of agencies, or heads of agencies, vested by law, and subject to the availability of appropriations;

(b) shall not be construed to impair or otherwise affect the authorities of any agency, instrumentality, officer, or employee of the United States under applicable law, including the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals, or the functions assigned by the President to the Director of the Office of Personnel Management; and

(c) is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH

The White House,
May 17, 2007.

Executive Order 13435 of June 20, 2007

Expanding Approved Stem Cell Lines in Ethically Responsible Ways

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to provide leadership with respect to research on pluripotent stem cells derived by ethically responsible techniques so that the potential of pluripotent stem cells can be explored without violating human dignity or demeaning human life, it is hereby ordered as follows:

Section 1. *Research on Alternative Sources of Pluripotent Stem Cells.* (a) The Secretary of Health and Human Services (Secretary) shall conduct and support research on the isolation, derivation, production, and testing of stem cells that are capable of producing all or almost all of the cell types of the developing body and may result in improved understanding of or treatments for diseases and other adverse health conditions, but are derived without creating a human embryo for research purposes or destroying, discarding, or subjecting to harm a human embryo or fetus.

(b) Within 90 days of this order, the Secretary, after such consultation with the Director of the National Institutes of Health (Director), shall issue a plan, including such mechanisms as requests for proposals, requests for applications, program announcements and other appropriate means, to implement subsection (a) of this section, that:

- (i) specifies and reflects a determination of the extent to which specific techniques may require additional basic or animal research to ensure that any research involving human cells using these techniques is clearly consistent with the standards established under this order and applicable law;
- (ii) prioritizes research with the greatest potential for clinical benefit;
- (iii) takes into account techniques outlined by the President's Council on Bioethics, and any other appropriate techniques and research, provided they clearly meet the standard set forth in subsection (a) of this section;
- (iv) renames the "Human Embryonic Stem Cell Registry" the "Human Pluripotent Stem Cell Registry;" and
- (v) adds to the registry new human pluripotent stem cell lines that clearly meet the standard set forth in subsection (a) of this section.

(c) Not later than December 31 of each year, the Secretary shall report to the President on the activities carried out under this order during the past fiscal year, including a description of the research carried out or supported by the Department of Health and Human Services, including the National Institutes of Health, and other developments in the science of pluripotent stem cells not derived from human embryos.

Sec. 2. *Policy.* The activities undertaken and supported by and under the direction of the Secretary shall be clearly consistent with the following policies and principles:

- (a) the purposes of this order are (i) to direct the Department of Health and Human Services, including the National Institutes of Health, to intensify

peer reviewed research that may result in improved understanding of or treatments for diseases and other adverse health conditions, and (ii) to promote the derivation of human pluripotent stem cell lines from a variety of alternative sources while clearly meeting the standard set forth in section 1(a) of this order;

(b) it is critical to establish moral and ethical boundaries to allow the Nation to move forward vigorously with medical research, while also maintaining the highest ethical standards and respecting human life and human dignity;

(c) the destruction of nascent life for research violates the principle that no life should be used as a mere means for achieving the medical benefit of another;

(d) human embryos and fetuses, as living members of the human species, are not raw materials to be exploited or commodities to be bought and sold; and

(e) the Federal Government has a duty to exercise responsible stewardship of taxpayer funds, both supporting important medical research and respecting ethical and moral boundaries.

Sec. 3. *Interpretation of this Order.* (a) For purposes of this order, the term “human embryo” shall mean any organism, not protected as a human subject under 45 CFR 46 as of the date of this order, that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells.

(b) For purposes of this order, the term “subjecting to harm a human embryo” shall mean subjecting such an embryo to risk of injury or death greater than that allowed for research on fetuses in utero under 45 CFR 46.204(b) and section 498(b) of the Public Health Service Act (42 U.S.C. 289g(b)) as of the date of this order.

(c) Nothing in this order shall be construed to affect any policy, guideline, or regulation regarding embryonic stem cell research, human cloning by somatic cell nuclear transfer, or any other research not specifically authorized by this order, or to forbid the use of existing stem cell lines deemed eligible for other federally funded research in accordance with the presidential policy decision of August 9, 2001, for research specifically authorized by this order.

Sec. 4. *General Provisions.* (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) This order is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH

The White House,

June 20, 2007.

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Executive Order 13436 of June 28, 2007

Further Amending Executive Order 13381, as Amended, To Extend Its Duration by One Year

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to extend by 1 year the duration of Executive Order 13381 of June 27, 2005 (Strengthening Processes Relating to Determining Eligibility for Access to Classified National Security Information), as amended, it is hereby ordered that:

Section 1. Section 6(a) of Executive Order 13381, as amended, is further amended by striking “April 1, 2007” and inserting in lieu thereof “April 1, 2008”.

Sec. 2. Section 6(b) of Executive Order 13381, as amended, is further amended by striking “July 1, 2007” and inserting in lieu thereof “July 1, 2008”.

GEORGE W. BUSH

The White House,
June 28, 2007.

Executive Order 13437 of June 28, 2007

Waiver Under the Trade Act of 1974 With Respect to Turkmenistan

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 402(c)(2) and (d) of the Trade Act of 1974, as amended (the “Act”)(19 U.S.C. 2432(c)(2) and (d)), and having made the report to the Congress set forth in section 402(c)(2), I hereby waive the application of subsections (a) and (b) of section 402 of the Act with respect to Turkmenistan.

GEORGE W. BUSH

The White House,
June 28, 2007.

Executive Order 13438 of July 17, 2007

Blocking Property of Certain Persons Who Threaten Stabilization Efforts in Iraq

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act, as amended (50 U.S.C. 1701 *et seq.*)(IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*)(NEA), and section 301 of title 3, United States Code,

I, GEORGE W. BUSH, President of the United States of America, find that, due to the unusual and extraordinary threat to the national security and foreign policy of the United States posed by acts of violence threatening the peace and stability of Iraq and undermining efforts to promote economic reconstruction and political reform in Iraq and to provide humanitarian assistance to the Iraqi people, it is in the interests of the United States to take additional steps with respect to the national emergency declared in Executive Order 13303 of May 22, 2003, and expanded in Executive Order 13315 of August 28, 2003, and relied upon for additional steps taken in Executive Order 13350 of July 29, 2004, and Executive Order 13364 of November 29, 2004. I hereby order:

Section 1. (a) Except to the extent provided in section 203(b)(1), (3), and (4) of IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)), or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the date of this order, all property and interests in property of the following persons, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: any person determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Defense,

(i) to have committed, or to pose a significant risk of committing, an act or acts of violence that have the purpose or effect of:

(A) threatening the peace or stability of Iraq or the Government of Iraq; or

(B) undermining efforts to promote economic reconstruction and political reform in Iraq or to provide humanitarian assistance to the Iraqi people;

(ii) to have materially assisted, sponsored, or provided financial, material, logistical, or technical support for, or goods or services in support of, such an act or acts of violence or any person whose property and interests in property are blocked pursuant to this order; or

(iii) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) The prohibitions in subsection (a) of this section include, but are not limited to, (i) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order, and (ii) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 2. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. For purposes of this order:

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- (a) the term “person” means an individual or entity;
- (b) the term “entity” means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization; and
- (c) the term “United States person” means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Sec. 4. I hereby determine that the making of donations of the type specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of, any person whose property and interests in property are blocked pursuant to this order would seriously impair my ability to deal with the national emergency declared in Executive Order 13303 and expanded in Executive Order 13315, and I hereby prohibit such donations as provided by section 1 of this order.

Sec. 5. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that, because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 13303 and expanded in Executive Order 13315, there need be no prior notice of a listing or determination made pursuant to section 1(a) of this order.

Sec. 6. The Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Defense, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government, consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order and, where appropriate, to advise the Secretary of the Treasury in a timely manner of the measures taken.

Sec. 7. Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses, or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under 31 C.F.R. chapter V, except as expressly terminated, modified, or suspended by or pursuant to this order.

Sec. 8. This order is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH

The White House,
July 17, 2007.

Executive Order 13439 of July 18, 2007

Establishing an Interagency Working Group on Import Safety

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to ensure that the executive branch takes all appropriate steps to promote the safety of imported products, it is hereby ordered as follows:

Section 1. *Establishment of Interagency Working Group on Import Safety.* The Secretary of Health and Human Services shall establish within the Department of Health and Human Services for administrative purposes only an Interagency Working Group on Import Safety (Working Group).

Sec. 2. *Membership and Operation of Working Group.*

(a) The Working Group shall consist exclusively of the following members, or their designees who shall be officers of the United States appointed by the President or members of the Senior Executive Service:

- (i) the Secretary of Health and Human Services, who shall serve as Chair;
- (ii) the Secretary of State;
- (iii) the Secretary of the Treasury;
- (iv) the Attorney General;
- (v) the Secretary of Agriculture;
- (vi) the Secretary of Commerce;
- (vii) the Secretary of Transportation;
- (viii) the Secretary of Homeland Security;
- (ix) the Director of the Office of Management and Budget;
- (x) the United States Trade Representative;
- (xi) the Administrator of the Environmental Protection Agency;
- (xii) the Chairman of the Consumer Product Safety Commission; and
- (xiii) other officers or full-time or permanent part-time employees of the United States, as determined by the Chair, with the concurrence of the head of the department or agency concerned.

(b) The Chair shall convene and preside at meetings of the Working Group, determine its agenda, and direct its work. The Chair may establish and direct subgroups of the Working Group, as appropriate to deal with particular subject matters, that shall consist exclusively of members of the Working Group. The Chair shall designate an officer or employee of the Department of Health and Human Services to serve as the Executive Secretary of the Working Group. The Executive Secretary shall head any staff assigned to the Working Group and any subgroups thereof, and such staff shall consist exclusively of full-time or permanent part-time Federal employees.

Sec. 3. *Mission of Working Group.* The mission of the Working Group shall be to identify actions and appropriate steps that can be pursued, within existing resources, to promote the safety of imported products, including the following:

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(a) reviewing or assessing current procedures and methods aimed at ensuring the safety of products exported to the United States, including reviewing existing cooperation with foreign governments, foreign manufacturers, and others in the exporting country's private sector regarding their inspection and certification of exported goods and factories producing exported goods and considering whether additional initiatives should be undertaken with respect to exporting countries or companies;

(b) identifying potential means to promote all appropriate steps by U.S. importers to enhance the safety of imported products, including identifying best practices by U.S. importers in selection of foreign manufacturers, inspecting manufacturing facilities, inspecting goods produced on their behalf either before export or before distribution in the United States, identifying origin of products, and safeguarding the supply chain; and

(c) surveying authorities and practices of Federal, State, and local government agencies regarding the safety of imports to identify best practices and enhance coordination among agencies.

Sec. 4. *Administration of Working Group.* The Chair shall, to the extent permitted by law, provide administrative support and funding for the Working Group.

Sec. 5. *Recommendations of Working Group.* The Working Group shall provide recommendations to the President, through the Assistant to the President for Economic Policy, on the matters set forth in section 3 within 60 days of the date of this order, unless the Chair determines that an extension is necessary. The Working Group may take other actions it considers appropriate to promote the safety of imported products.

Sec. 6. *Termination of Working Group.* Following consultation with the Assistant to the President for Economic Policy, the Chair shall terminate the Working Group upon the completion of its duties.

Sec. 7. *General Provisions.*

(a) Nothing in this order shall be construed to impair or otherwise affect (i) authority granted by law to a department, agency, or the head thereof, or (ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH

The White House,

July 18, 2007.

Executive Order 13440 of July 20, 2007

**Interpretation of the Geneva Conventions Common Article 3
as Applied to a Program of Detention and Interrogation
Operated by the Central Intelligence Agency**

By the authority vested in me as President and Commander in Chief of the Armed Forces by the Constitution and the laws of the United States of America, including the Authorization for Use of Military Force (Public Law 107–40), the Military Commissions Act of 2006 (Public Law 109–366), and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *General Determinations.* (a) The United States is engaged in an armed conflict with al Qaeda, the Taliban, and associated forces. Members of al Qaeda were responsible for the attacks on the United States of September 11, 2001, and for many other terrorist attacks, including against the United States, its personnel, and its allies throughout the world. These forces continue to fight the United States and its allies in Afghanistan, Iraq, and elsewhere, and they continue to plan additional acts of terror throughout the world. On February 7, 2002, I determined for the United States that members of al Qaeda, the Taliban, and associated forces are unlawful enemy combatants who are not entitled to the protections that the Third Geneva Convention provides to prisoners of war. I hereby reaffirm that determination.

(b) The Military Commissions Act defines certain prohibitions of Common Article 3 for United States law, and it reaffirms and reinforces the authority of the President to interpret the meaning and application of the Geneva Conventions.

Sec. 2. *Definitions.* As used in this order:

- (a) “Common Article 3” means Article 3 of the Geneva Conventions.
- (b) “Geneva Conventions” means:
 - (i) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3114);
 - (ii) the Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);
 - (iii) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and
 - (iv) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).
- (c) “Cruel, inhuman, or degrading treatment or punishment” means the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States.

Sec. 3. *Compliance of a Central Intelligence Agency Detention and Interrogation Program with Common Article 3.* (a) Pursuant to the authority of the

President under the Constitution and the laws of the United States, including the Military Commissions Act of 2006, this order interprets the meaning and application of the text of Common Article 3 with respect to certain detentions and interrogations, and shall be treated as authoritative for all purposes as a matter of United States law, including satisfaction of the international obligations of the United States. I hereby determine that Common Article 3 shall apply to a program of detention and interrogation operated by the Central Intelligence Agency as set forth in this section. The requirements set forth in this section shall be applied with respect to detainees in such program without adverse distinction as to their race, color, religion or faith, sex, birth, or wealth.

(b) I hereby determine that a program of detention and interrogation approved by the Director of the Central Intelligence Agency fully complies with the obligations of the United States under Common Article 3, provided that:

(i) the conditions of confinement and interrogation practices of the program do not include:

(A) torture, as defined in section 2340 of title 18, United States Code;

(B) any of the acts prohibited by section 2441(d) of title 18, United States Code, including murder, torture, cruel or inhuman treatment, mutilation or maiming, intentionally causing serious bodily injury, rape, sexual assault or abuse, taking of hostages, or performing of biological experiments;

(C) other acts of violence serious enough to be considered comparable to murder, torture, mutilation, and cruel or inhuman treatment, as defined in section 2441(d) of title 18, United States Code;

(D) any other acts of cruel, inhuman, or degrading treatment or punishment prohibited by the Military Commissions Act (subsection 6(c) of Public Law 109–366) and the Detainee Treatment Act of 2005 (section 1003 of Public Law 109–148 and section 1403 of Public Law 109–163);

(E) willful and outrageous acts of personal abuse done for the purpose of humiliating or degrading the individual in a manner so serious that any reasonable person, considering the circumstances, would deem the acts to be beyond the bounds of human decency, such as sexual or sexually indecent acts undertaken for the purpose of humiliation, forcing the individual to perform sexual acts or to pose sexually, threatening the individual with sexual mutilation, or using the individual as a human shield; or

(F) acts intended to denigrate the religion, religious practices, or religious objects of the individual;

(ii) the conditions of confinement and interrogation practices are to be used with an alien detainee who is determined by the Director of the Central Intelligence Agency:

(A) to be a member or part of or supporting al Qaeda, the Taliban, or associated organizations; and

(B) likely to be in possession of information that:

(1) could assist in detecting, mitigating, or preventing terrorist attacks, such as attacks within the United States or against its Armed Forces or other personnel, citizens, or facilities, or against allies or

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other countries cooperating in the war on terror with the United States, or their armed forces or other personnel, citizens, or facilities; or

(2) could assist in locating the senior leadership of al Qaeda, the Taliban, or associated forces;

(iii) the interrogation practices are determined by the Director of the Central Intelligence Agency, based upon professional advice, to be safe for use with each detainee with whom they are used; and

(iv) detainees in the program receive the basic necessities of life, including adequate food and water, shelter from the elements, necessary clothing, protection from extremes of heat and cold, and essential medical care.

(c) The Director of the Central Intelligence Agency shall issue written policies to govern the program, including guidelines for Central Intelligence Agency personnel that implement paragraphs (i)(C), (E), and (F) of subsection 3(b) of this order, and including requirements to ensure:

(i) safe and professional operation of the program;

(ii) the development of an approved plan of interrogation tailored for each detainee in the program to be interrogated, consistent with subsection 3(b)(iv) of this order;

(iii) appropriate training for interrogators and all personnel operating the program;

(iv) effective monitoring of the program, including with respect to medical matters, to ensure the safety of those in the program; and

(v) compliance with applicable law and this order.

Sec. 4. *Assignment of Function.* With respect to the program addressed in this order, the function of the President under section 6(c)(3) of the Military Commissions Act of 2006 is assigned to the Director of National Intelligence.

Sec. 5. *General Provisions.* (a) Subject to subsection (b) of this section, this order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

(b) Nothing in this order shall be construed to prevent or limit reliance upon this order in a civil, criminal, or administrative proceeding, or otherwise, by the Central Intelligence Agency or by any individual acting on behalf of the Central Intelligence Agency in connection with the program addressed in this order.

GEORGE W. BUSH

The White House,

July 20, 2007.

Executive Order 13441 of August 1, 2007

Blocking Property of Persons Undermining the Sovereignty of Lebanon or Its Democratic Processes and Institutions

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*)(IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*)(NEA), and section 301 of title 3, United States Code,

I, GEORGE W. BUSH, President of the United States of America, determine that the actions of certain persons to undermine Lebanon's legitimate and democratically elected government or democratic institutions, to contribute to the deliberate breakdown in the rule of law in Lebanon, including through politically motivated violence and intimidation, to reassert Syrian control or contribute to Syrian interference in Lebanon, or to infringe upon or undermine Lebanese sovereignty contribute to political and economic instability in that country and the region and constitute an unusual and extraordinary threat to the national security and foreign policy of the United States, and I hereby declare a national emergency to deal with that threat. I hereby order:

Section 1. (a) Except to the extent provided in section 203(b)(1), (3), and (4) of IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)), or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the date of this order, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any overseas branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(A) to have taken, or to pose a significant risk of taking, actions, including acts of violence, that have the purpose or effect of undermining Lebanon's democratic processes or institutions, contributing to the breakdown of the rule of law in Lebanon, supporting the reassertion of Syrian control or otherwise contributing to Syrian interference in Lebanon, or infringing upon or undermining Lebanese sovereignty;

(B) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, such actions, including acts of violence, or any person whose property and interests in property are blocked pursuant to this order;

(C) to be a spouse or dependent child of any person whose property and interests in property are blocked pursuant to this order; or

(D) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to paragraph (a) of this section would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by paragraph (a) of this section.

(c) The prohibitions in paragraph (a) of this section include but are not limited to (i) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order, and (ii) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 2. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. For the purposes of this order:

(a) the term “person” means an individual or entity;

(b) the term “entity” means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization; and

(c) the term “United States person” means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Sec. 4. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that, because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that, for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 5. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government, consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order and, where appropriate, to advise the Secretary of the Treasury in a timely manner of the measures taken. The Secretary of the Treasury shall ensure compliance with those provisions of section 401 of the NEA (50 U.S.C. 1641) applicable to the Department of the Treasury in relation to this order.

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Sec. 6. The Secretary of the Treasury, after consultation with the Secretary of State, is hereby authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 7. This order is not intended to create, nor does it create, any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH

The White House,
August 1, 2007.

Executive Order 13442 of August 13, 2007

Amending the Order of Succession in the Department of Homeland Security

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345, *et seq.*, it is hereby ordered as follows:

Section 1. Section 88 of Executive Order 13286 of February 28, 2003 (“Amendment of Executive Orders, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security”), is amended by striking the text of such section in its entirety and inserting the following in lieu thereof:

“Sec. 88. Order of Succession.

Subject to the provisions of subsection (b) of this section, the officers named in subsection (a) of this section, in the order listed, shall act as, and perform the functions and duties of the office of, the Secretary of Homeland Security (Secretary), if they are eligible to act as Secretary under the provisions of the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.* (Vacancies Act), during any period in which the Secretary has died, resigned, or otherwise become unable to perform the functions and duties of the office of Secretary.

(a) Order of Succession.

”(i) Deputy Secretary of Homeland Security;

(ii) Under Secretary for National Protection and Programs;

(iii) Under Secretary for Management;

(iv) Assistant Secretary of Homeland Security (Policy);

(v) Under Secretary for Science and Technology;

(vi) General Counsel;

(vii) Assistant Secretary of Homeland Security (Transportation Security Administration);

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- (viii) Administrator of the Federal Emergency Management Agency;
- (ix) Commissioner of U.S. Customs and Border Protection;
- (x) Assistant Secretary of Homeland Security (U.S. Immigration and Customs Enforcement);
- (xi) Director of U.S. Citizenship and Immigration Services;
- (xii) Chief Financial Officer;
- (xiii) Regional Administrator, Region V, Federal Emergency Management Agency;
- (xiv) Regional Administrator, Region VI, Federal Emergency Management Agency;
- (xv) Regional Administrator, Region VII, Federal Emergency Management Agency;
- (xvi) Regional Administrator, Region IX, Federal Emergency Management Agency; and
- (xvii) Regional Administrator, Region I, Federal Emergency Management Agency.

“(b) Exceptions.

- (i) No individual who is serving in an office listed in subsection (a) in an acting capacity, by virtue of so serving, shall act as Secretary pursuant to this section.
- (ii) Notwithstanding the provisions of this section, the President retains discretion, to the extent permitted by the Vacancies Act, to depart from this order in designating an acting Secretary.”

Sec. 2. Executive Order 13362 of November 29, 2004 (“Designation of Additional Officers for the Department of Homeland Security Order of Succession”), is hereby revoked.

GEORGE W. BUSH

The White House,
August 13, 2007.

Executive Order 13443 of August 16, 2007

Facilitation of Hunting Heritage and Wildlife Conservation

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Purpose. The purpose of this order is to direct Federal agencies that have programs and activities that have a measurable effect on public land management, outdoor recreation, and wildlife management, including the Department of the Interior and the Department of Agriculture, to facilitate the expansion and enhancement of hunting opportunities and the management of game species and their habitat.

Sec. 2. Federal Activities. Federal agencies shall, consistent with agency missions:

- (a) Evaluate the effect of agency actions on trends in hunting participation and, where appropriate to address declining trends, implement actions that expand and enhance hunting opportunities for the public;
- (b) Consider the economic and recreational values of hunting in agency actions, as appropriate;
- (c) Manage wildlife and wildlife habitats on public lands in a manner that expands and enhances hunting opportunities, including through the use of hunting in wildlife management planning;
- (d) Work collaboratively with State governments to manage and conserve game species and their habitats in a manner that respects private property rights and State management authority over wildlife resources;
- (e) Establish short and long term goals, in cooperation with State and tribal governments, and consistent with agency missions, to foster healthy and productive populations of game species and appropriate opportunities for the public to hunt those species;
- (f) Ensure that agency plans and actions consider programs and recommendations of comprehensive planning efforts such as State Wildlife Action Plans, the North American Waterfowl Management Plan, and other range-wide management plans for big game and upland game birds;
- (g) Seek the advice of State and tribal fish and wildlife agencies, and, as appropriate, consult with the Sporting Conservation Council and other organizations, with respect to the foregoing Federal activities.

Sec. 3. *North American Wildlife Policy Conference.* The Chairman of the Council on Environmental Quality (Chairman) shall, in coordination with the appropriate Federal agencies and in consultation with the Sporting Conservation Council and in cooperation with State and tribal fish and wildlife agencies and the public, convene not later than 1 year after the date of this order, and periodically thereafter at such times as the Chairman deems appropriate, a White House Conference on North American Wildlife Policy (Conference) to facilitate the exchange of information and advice relating to the means for achieving the goals of this order.

Sec. 4. *Recreational Hunting and Wildlife Resource Conservation Plan.* The Chairman shall prepare, consistent with applicable law and subject to the availability of appropriations, in coordination with the appropriate Federal agencies and in consultation with the Sporting Conservation Council, and in cooperation with State and tribal fish and wildlife agencies, not later than 1 year following the conclusion of the Conference, a comprehensive Recreational Hunting and Wildlife Conservation Plan that incorporates existing and ongoing activities and sets forth a 10-year agenda for fulfilling the actions identified in section 2 of this order.

Sec. 5. *Judicial Review.* This order is not intended to, and does not, create any right, benefit, trust responsibility, or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH

The White House,
August 16, 2007.

Executive Order 13444 of September 12, 2007

Extending Privileges and Immunities to the African Union Mission to the United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7(a)(2) of the Department of State Authorities Act of 2006 (Public Law 109–472), I hereby extend to the African Union Mission to the United States of America, and to its members, the privileges and immunities enjoyed by diplomatic missions accredited to the United States, and by members of such missions, subject to corresponding conditions and obligations.

This extension of privileges and immunities is not intended to abridge in any respect privileges and immunities that the African Union Mission to the United States of America and its members otherwise may have acquired or may acquire by law.

GEORGE W. BUSH

The White House,
September 12, 2007.

Executive Order 13445 of September 27, 2007

Strengthening Adult Education

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. It is the policy of the United States to use existing Federal programs that serve adults, including new Americans, to strengthen literacy skills, improve opportunities for postsecondary education and employment, and facilitate participation in American life.

Sec. 2. Definitions. As used in this order:

- (a) “agency” means an executive agency as defined in section 105 of title 5, United States Code, other than the Government Accountability Office; and
- (b) “adult education” means teaching or instruction below the postsecondary level, for individuals who are 16 years of age or older, designed to provide:
 - (i) mastery of basic education skills needed to function effectively in society;
 - (ii) a secondary school diploma or its equivalent; or
 - (iii) the ability to speak, read, or write the English language.

Sec. 3. Establishment of Interagency Adult Education Working Group. The Secretary of Education shall establish within the Department of Education for administrative purposes only, an Interagency Adult Education Working Group (Working Group), consistent with this order.

Sec. 4. Membership and Operation of the Working Group.

- (a) The Working Group shall consist exclusively of:
 - (i) the Secretary of Education, who shall serve as Chair;
 - (ii) the Secretary of the Treasury, the Attorney General, and the Secretaries of the Interior, Labor, Health and Human Services, Housing and Urban Development, and Veterans Affairs; and
 - (iii) other officers or full-time or permanent part-time employees of the United States, as determined by the Chair, with the concurrence of the head of the agency concerned.
- (b) The Chair, or the Chair's designee under subsection (c) of this section, in implementing section 5 of this order, shall convene and preside at the meetings of the Working Group, determine its agenda, direct its work, and establish and direct subgroups of the Working Group, as appropriate to deal with particular subject matters, that shall consist exclusively of members of the Working Group or their designees under subsection (c) of this section.
- (c) A member of the Working Group may designate, to perform the Working Group or Working Group subgroup functions of the member, any person who is a part of the member's agency and who is either an officer of the United States appointed by the President or a member of the Senior Executive Service.

Sec. 5. *Functions of the Working Group.* Consistent with the policy set forth in section 1 of this order, the Working Group shall:

- (a) identify Federal programs that:
 - (i) focus primarily on improving the basic education skills of adults;
 - (ii) have the goal of transitioning adults from basic literacy to postsecondary education, training, or employment; or
 - (iii) constitute programs of adult education;
- (b) as appropriate, review the programs identified under subsection (a) of this section and submit to the heads of the agencies administering those programs recommendations to:
 - (i) promote the transition of adults from such programs to postsecondary education, training, or employment;
 - (ii) increase the effectiveness, efficiency, and availability of such programs;
 - (iii) minimize unnecessary duplication among such programs;
 - (iv) measure and evaluate the performance of such programs; and
 - (v) undertake and disseminate the results of research related to such programs;
- (c) identify gaps in the research about effective ways to teach adult education for postsecondary readiness, recommend areas for further research to improve adult education programs and services, and identify promising practices in disseminating valid existing and future research findings; and
- (d) obtain information and advice as appropriate, in a manner that seeks individual advice and does not involve collective judgment or consensus advice or deliberation, concerning adult education from:

- (i) State, local, territorial, and tribal officials; and
- (ii) representatives of entities or other individuals;
- (e) at the request of the head of an agency, unless the Chair declines the request, promptly review and provide advice on a proposed action by that agency relating to adult education; and
- (f) report to the President, through the Assistant to the President for Domestic Policy, on its work, and on the implementation of any recommendations arising from its work, at such times and in such formats as the Chair may specify, with the first such report to be submitted no later than 9 months after the date of this order.

Sec. 6. *Administration of the Working Group.* (a) To the extent permitted by law, the Department of Education shall provide the funding and administrative support the Working Group needs, as determined by the Chair, to implement this order.

- (b) The heads of agencies shall provide, as appropriate, such assistance and information as the Chair may request to implement this order.

Sec. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) authority granted by law to an agency or the head thereof; or
- (ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.
- (b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.
- (c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its agencies or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH

The White House,
September 27, 2007.

Executive Order 13446 of September 28, 2007

Continuance of Certain Federal Advisory Committees and Amendments to and Revocation of Other Executive Orders

By the authority vested in me as President by the Constitution and the laws of the United States of America, and consistent with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

Section 1. Each advisory committee listed below is continued until September 30, 2009.

- (a) Committee for the Preservation of the White House; Executive Order 11145, as amended (Department of the Interior).

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- (b) National Infrastructure Advisory Council; section 3 of Executive Order 13231, as amended (Department of Homeland Security).
- (c) Federal Advisory Council on Occupational Safety and Health; Executive Order 12196, as amended (Department of Labor).
- (d) President's Board of Advisors on Historically Black Colleges and Universities; Executive Order 13256 (Department of Education).
- (e) President's Board of Advisors on Tribal Colleges and Universities; Executive Order 13270 (Department of Education).
- (f) President's Commission on White House Fellowships; Executive Order 11183, as amended (Office of Personnel Management).
- (g) President's Committee for People with Intellectual Disabilities; Executive Order 12994, as amended (Department of Health and Human Services).
- (h) President's Committee on the Arts and the Humanities; Executive Order 12367, as amended (National Endowment for the Arts).
- (i) President's Committee on the International Labor Organization; Executive Order 12216, as amended (Department of Labor).
- (j) President's Committee on the National Medal of Science; Executive Order 11287, as amended (National Science Foundation).
- (k) President's Council of Advisors on Science and Technology; Executive Order 13226, as amended (Office of Science and Technology Policy).
- (l) President's Council on Bioethics; Executive Order 13237 (Department of Health and Human Services).
- (m) President's Council on Physical Fitness and Sports; Executive Order 13265 (Department of Health and Human Services).
- (n) President's Export Council; Executive Order 12131, as amended (Department of Commerce).
- (o) President's National Security Telecommunications Advisory Committee; Executive Order 12382, as amended (Department of Homeland Security).
- (p) Trade and Environment Policy Advisory Committee; Executive Order 12905 (Office of the United States Trade Representative).

Sec. 2. Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act that are applicable to the committees listed in section 1 of this order shall be performed by the head of the department or agency designated after each committee, in accordance with the guidelines and procedures established by the Administrator of General Services.

Sec. 3. The following Executive Order, which established a committee whose work has been completed, is revoked: Executive Order 13369, as amended by Executive Orders 13379 and 13386, establishing the President's Advisory Panel on Federal Tax Reform.

Sec. 4. Sections 1 and 2 of Executive Order 13385 are superseded by sections 1 and 2 of this order.

Sec. 5. Executive Order 12994, as amended (President's Committee for People with Intellectual Disabilities) is further amended to read as follows:

“By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote full participation of people with intellectual disabilities in their communities, it is hereby ordered as follows:

“**Section 1.** *Committee Continued and Responsibilities Expanded.* The President’s Committee on Mental Retardation, with expanded membership and expanded responsibilities, and renamed the President’s Committee for People with Intellectual Disabilities (Committee), is hereby continued in operation.

“**Sec. 2.** *Composition of Committee.* (a) The Committee shall be composed of the following members:

- (1) The Attorney General;
- (2) The Secretary of the Interior;
- (3) The Secretary of Commerce;
- (4) The Secretary of Labor;
- (5) The Secretary of Health and Human Services;
- (6) The Secretary of Housing and Urban Development;
- (7) The Secretary of Transportation;
- (8) The Secretary of Education;
- (9) The Secretary of Homeland Security;
- (10) The Chief Executive Officer of the Corporation for National and Community Service;
- (11) The Commissioner of Social Security;
- (12) The Chairman of the Equal Employment Opportunity Commission;
- (13) The Chairperson of the National Council on Disability; and
- (14) No more than 21 other members who shall be appointed to the Committee by the President. These citizen members shall consist of individuals who represent a broad spectrum of perspectives, experience, and expertise on intellectual disabilities; persons with intellectual disabilities and members of families with a child or adult with intellectual disabilities; and persons employed in either the public or the private sector. Except as the President may from time to time otherwise direct, appointees under this paragraph shall serve for two-year terms, except that an appointment made to fill a vacancy occurring before the expiration of a term shall be made for the balance of the unexpired term.

“(b) The President shall designate the Chair of the Committee from the 21 citizen members. The Chair shall preside over meetings of the Committee and represent the Committee on appropriate occasions.

“**Sec. 3.** *Functions of the Committee.* (a) Consistent with subsection (c) of this section, the Committee shall:

- (1) provide such advice concerning intellectual disabilities as the President or the Secretary of Health and Human Services may request; and
- (2) provide advice to the President concerning the following for people with intellectual disabilities:
 - (A) expansion of educational opportunities;
 - (B) promotion of homeownership;

- (C) assurance of workplace integration;
- (D) improvement of transportation options;
- (E) expansion of full access to community living; and
- (F) increasing access to assistive and universally designed technologies.

“(b) The Committee shall provide an annual report to the President through the Secretary of Health and Human Services. Such additional reports may be made as the President may direct or as the Committee may deem appropriate.

“(c) The members shall advise the President and carry out their advisory role consistent with the requirements of the Federal Advisory Committee Act, as amended (5 U.S.C. App.).

“**Sec. 4. Cooperation by Agencies.** The heads of Federal departments and agencies shall:

“(a) designate, when requested by the Secretary of Health and Human Services, an officer or employee of such department or agency to serve as a liaison with the Committee; and

“(b) furnish such information and assistance to the Committee, to the extent permitted by law, as the Secretary of Health and Human Services may request to assist the Committee in performing its functions under this order.

“**Sec. 5. Administration.** (a) The Department of Health and Human Services shall provide the Committee with necessary staff support, administrative services and facilities, and funding, to the extent permitted by law.

“(b) Each member of the Committee, except any member who receives other compensation from the United States Government, may receive compensation for each day engaged in the work of the Committee, as authorized by law (5 U.S.C. 3109), and may also receive travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5701–5707), for persons employed intermittently in the Government service. Committee members with disabilities may be compensated for attendant expenses, consistent with Government procedures and practices.

“(c) The Secretary of Health and Human Services shall perform such other functions with respect to the Committee as may be required by the Federal Advisory Committee Act, as amended (5 U.S.C. App.), except that of reporting to the Congress.

“**Sec. 6. General.** (a) Nothing in this order shall be construed as subjecting any Federal agency, or any function vested by law in, or assigned pursuant to law to, any Federal agency, to the authority of the Committee or as abrogating or restricting any such function in any manner.

“(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.”.

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Sec. 6. This order shall be effective September 30, 2007.

GEORGE W. BUSH

The White House,
September 28, 2007.

Executive Order 13447 of September 28, 2007

**Further 2007 Amendments to the Manual for Courts-Martial,
United States**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10, United States Code (Uniform Code of Military Justice, 10 U.S.C. 801–946), and in order to prescribe amendments to the Manual for Courts-Martial, United States, prescribed by Executive Order 12473, as amended, it is hereby ordered as follows:

Section 1. The second subparagraph of paragraph 4, of Part I, of the Manual for Courts-Martial, United States, as amended by section 2 of Executive Order 13262 of April 11, 2002, is amended by striking the third sentence.

Sec. 2. Parts II, III, and IV of the Manual for Courts-Martial, United States, are amended as described in the Annex attached and made a part of this order.

Sec. 3. These amendments shall take effect on October 1, 2007.

(a) Nothing in these amendments shall be construed to make punishable any act done or omitted prior to October 1, 2007, that was not punishable when done or omitted.

(b) Nothing in these amendments shall be construed to invalidate any non-judicial punishment proceedings, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to October 1, 2007, and any such nonjudicial punishment, restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

GEORGE W. BUSH

The White House,
September 28, 2007.

ANNEX

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 916(b) is amended to read as follows:

"(b) Burden of proof.

(1) *General rule.* Except as listed below in paragraphs (2), (3), and (4), the prosecution shall have the burden of proving beyond a reasonable doubt that the defense did not exist.

(2) *Lack of mental responsibility.* The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

(3) *Mistake of fact as to age.* In the defense of mistake of fact as to age as described in Part IV, para. 45a(o)(2) in a prosecution of a sexual offense with a child under Article 120, the accused has the burden of proving mistake of fact as to age by a preponderance of the evidence. After the accused meets his or her burden, the prosecution shall have the burden of proving beyond a reasonable doubt that the defense did not exist.

(4) *Mistake of fact as to consent.* In the defense of mistake of fact as to consent in Article 120(a), rape, Article 120(c), aggravated sexual assault, Article 120(e), aggravated sexual contact, and Article 120(h), abusive sexual contact, the accused has the burden of proving mistake of fact as to consent by a preponderance of the evidence. After the defense meets its burden, the prosecution shall have the burden of proving beyond a reasonable doubt that the defense did not exist."

(b) R.C.M. 916(j)(2) is amended to read as follows:

"(2) *Child Sexual Offenses.* It is a defense to a prosecution for Article 120(d), aggravated sexual assault of a child, Article 120(f), aggravated sexual abuse of a child, Article 120(i), abusive sexual contact with a child, or Article 120(j), indecent liberty with a child that, at the

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time of the offense, the child was at least 12 years of age, and the accused reasonably believed the person was at least 16 years of age. The accused must prove this defense by a preponderance of the evidence."

(c) R.C.M. 916(j) is amended by inserting new paragraph R.C.M. 916(j)(3) after the Discussion section to R.C.M. 916(j)(2) as follows:

"(j)(3) *Sexual offenses*. It is an affirmative defense to a prosecution for Article 120(a), rape, Article 120(c), aggravated sexual assault, Article 120(e), aggravated sexual contact, and Article 120(h), abusive sexual contact that the accused held, as a result of ignorance or mistake, an incorrect belief that the other person engaging in the sexual conduct consented. The ignorance or mistake must have existed in the mind of the accused and must have been reasonable under all the circumstances. To be reasonable the ignorance or mistake must have been based on information, or lack of it, which would indicate to a reasonable person that the other person consented. Additionally, the ignorance or mistake cannot be based on the negligent failure to discover the true facts. Negligence is the absence of due care. Due care is what a reasonably careful person would do under the same or similar circumstances. The accused's state of intoxication, if any, at the time of the offense is not relevant to mistake of fact. A mistaken belief that the other person consented must be that which a reasonably careful, ordinary, prudent, sober adult would have had under the circumstances at the time of the offense."

(d) R.C.M. 920(e)(5)(D) is amended to read as follows:

"(D) The burden of proof to establish the guilt of the accused is upon the Government. [When the issue of lack of mental responsibility is raised, add: The burden of proving the defense

of lack of mental responsibility by clear and convincing evidence is upon the accused. When the issue of mistake of fact under R.C.M. 916(j)(2) or (j)(3) is raised, add: The accused has the burden of proving the defense of mistake of fact as to consent or age by a preponderance of the evidence.]"

(e) R.C.M. 1004(c)(7)(B) is amended to read as follows:

"(B) The murder was committed: while the accused was engaged in the commission or attempted commission of any robbery, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, aggravated arson, sodomy, burglary, kidnapping, mutiny, sedition, or piracy of an aircraft or vessel; or while the accused was engaged in the commission or attempted commission of any offense involving the wrongful distribution, manufacture, or introduction or possession, with intent to distribute, of a controlled substance; or, while the accused was engaged in flight or attempted flight after the commission or attempted commission of any such offense."

(f) R.C.M. 1004(c)(8) is amended to read as follows:

"(8) That only in the case of a violation of Article 118(4), the accused was the actual perpetrator of the killing or was a principal whose participation in the burglary, sodomy, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, robbery, or aggravated arson was major and who manifested a reckless indifference for human life."

(g) R.C.M. 1102(b)(2) is amended to read as follows:

"(2) Article 39(a) sessions. An Article 39(a) session under this rule may be called, upon motion of either party or

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sua sponte by the military judge, for the purpose of inquiring into, and, when appropriate, resolving any matter that arises after trial and that substantially affects the legal sufficiency of any findings of guilty or the sentence. The military judge may also call an Article 39(a) session, upon motion of either party or *sua sponte*, to reconsider any trial ruling that substantially affects the legal sufficiency of any findings of guilty or the sentence. The military judge may, *sua sponte*, at any time prior to authentication of the record of trial, enter a finding of not guilty of one or more offenses charged, or may enter a finding of not guilty of a part of a specification as long as a lesser offense charged is alleged in the remaining portion of the specification. Prior to entering such a finding or findings, the military judge shall give each party an opportunity to be heard on the matter in a post-trial Article 39(a) session."

(h) R.C.M. 1102(d) is amended by deleting the last phrase of the second sentence, which reads:

" , except that no proceeding in revision may be held when any part of the sentence has been ordered executed".

(i) R.C.M. 1102(e) (2) is amended by inserting the following sentence after the last sentence in R.C.M. 1102(e) (2):

"Prior to the military judge *sua sponte* entering a finding of not guilty of one or more offenses charged or entering a finding of not guilty of a part of a specification as long as a lesser offense charged is alleged in the remaining portion of the specification, the military judge shall give each party an opportunity to be heard on the matter."

(j) R.C.M. 1204(c) (2) is amended to read as follows:

"(2) Sentence requiring approval of the President. (A) If the Court of Appeals for the Armed Forces has affirmed a sentence

that must be approved by the President before it may be executed, the Judge Advocate General shall transmit the record of trial, the decision of the Court of Criminal Appeals, the decision of the Court of Appeals for the Armed Forces, and the recommendation of the Judge Advocate General to the Secretary concerned.

(B) If the Secretary concerned is the Secretary of a military department, the Secretary concerned shall forward the material received under paragraph (A) to the Secretary of Defense, together with the recommendation of the Secretary concerned. The Secretary of Defense shall forward the material, with the recommendation of the Secretary concerned and the recommendation of the Secretary of Defense, to the President for the action of the President.

(C) If the Secretary concerned is the Secretary of Homeland Security, the Secretary concerned shall forward the material received under paragraph (A) to the President, together with the recommendation of the Secretary concerned, for the action of the President."

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

(a) Mil. R. Evid. 412 is amended to read as follows:

"Rule 412. Sex offense cases; relevance of alleged victim's sexual behavior or sexual predisposition

(a) *Evidence generally inadmissible.* The following evidence is not admissible in any proceeding involving an alleged sexual offense except as provided in subdivisions (b) and (c):

(1) Evidence offered to prove that any alleged victim engaged in other sexual behavior.

(2) Evidence offered to prove any alleged victim's sexual predisposition.

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(b) *Exceptions.*

(1) In a proceeding, the following evidence is admissible, if otherwise admissible under these rules:

(A) evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence;

(B) evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent or by the prosecution; and

(C) evidence the exclusion of which would violate the constitutional rights of the accused.

(c) *Procedure to determine admissibility.*

(1) A party intending to offer evidence under subsection (b) must --

(A) file a written motion at least 5 days prior to entry of pleas specifically describing the evidence and stating the purpose for which it is offered unless the military judge, for good cause shown, requires a different time for filing or permits filing during trial; and

(B) serve the motion on the opposing party and the military judge and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative.

(2) Before admitting evidence under this rule, the military judge must conduct a hearing, which shall be closed. At this hearing, the parties may call witnesses, including the alleged victim, and offer relevant evidence. The alleged victim must be afforded a reasonable opportunity to attend and be heard. In a case before a court-martial composed of a military judge and

members, the military judge shall conduct the hearing outside the presence of the members pursuant to Article 39(a). The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.

(3) If the military judge determines on the basis of the hearing described in paragraph (2) of this subsection that the evidence that the accused seeks to offer is relevant for a purpose under subsection (b) and that the probative value of such evidence outweighs the danger of unfair prejudice to the alleged victim's privacy, such evidence shall be admissible under this rule to the extent an order made by the military judge specifies evidence that may be offered and areas with respect to which the alleged victim may be examined or cross-examined. Such evidence is still subject to challenge under Mil. R. Evid. 403.

(d) For purposes of this rule, the term "sexual offense" includes any sexual misconduct punishable under the Uniform Code of Military Justice, federal law, or state law. "Sexual behavior" includes any sexual behavior not encompassed by the alleged offense. The term "sexual predisposition" refers to an alleged victim's mode of dress, speech, or lifestyle that does not directly refer to sexual activities or thoughts but that may have a sexual connotation for the factfinder."

(b) Mil. R. Evid. 503(b) is amended by renumbering the existing subsection (2) as subsection (3) and inserting the following new subsection (2) after current Mil. R. Evid. 503(b)(1) to read as follows:

"(2) A "clergyman's assistant" is a person employed by or assigned to assist a clergyman in his capacity as a spiritual advisor."

(c) Mil. R. Evid. 504 is amended by inserting new subsection (d) after Mil. R. Evid. 504(c) to read as follows:

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"(d) *Definitions.* As used in this rule:

(1) The term "a child of either" includes not only a biological child, adopted child, or ward of one of the spouses but also includes a child who is under the permanent or temporary physical custody of one of the spouses, regardless of the existence of a legal parent-child relationship. For purposes of this rule only, a child is: (i) an individual under the age of 18; or (ii) an individual with a mental handicap who functions under the age of 18.

(2) The term "temporary physical custody" includes instances where a parent entrusts his or her child with another. There is no minimum amount of time necessary to establish temporary physical custody nor must there be a written agreement. Rather, the focus is on the parent's agreement with another for assuming parental responsibility for the child. For example, temporary physical custody may include instances where a parent entrusts another with the care of their child for recurring care or during absences due to temporary duty or deployments."

Sec. 3. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 43, Article 118, Murder, paragraph a.(4) is amended to read as follows:

"(4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, robbery or aggravated arson; is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) or (4), he shall suffer death or imprisonment for life as a court-martial may direct."

(b) Paragraph 43, Article 118, Murder, paragraph b.(4)(d) is amended to read as follows:

"(d) That, at the time of the killing, the accused was engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, robbery, or aggravated arson."

(c) Paragraph 44, Article 119, Manslaughter, paragraph b.(2)(d) is amended to read as follows:

"(d) That this act or omission of the accused constituted culpable negligence, or occurred while the accused was perpetrating or attempting to perpetrate an offense directly affecting the person other than burglary, sodomy, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, robbery, or aggravated arson."

(d) Paragraph 45, Rape and Carnal Knowledge is amended to read as follows:

"45. Article 120 -- Rape, sexual assault, and other sexual misconduct

a. Text.

"(a) Rape. Any person subject to this chapter who causes another person of any age to engage in a sexual act by --

(1) using force against that other person;

(2) causing grievous bodily harm to any person;

(3) threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping;

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(4) rendering another person unconscious; or

(5) administering to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby substantially impairs the ability of that other person to appraise or control conduct;

is guilty of rape and shall be punished as a court-martial may direct.

(b) *Rape of a child.* Any person subject to this chapter who --

(1) engages in a sexual act with a child who has not attained the age of 12 years; or

(2) engages in a sexual act under the circumstances described in subsection (a) with a child who has attained the age of 12 years;

is guilty of rape of a child and shall be punished as a court-martial may direct.

(c) *Aggravated sexual assault.* Any person subject to this chapter who -- (1) causes another person of any age to engage in a sexual act by --

(A) threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping); or

(B) causing bodily harm; or

(2) engages in a sexual act with another person of any age if that other person is substantially incapacitated or substantially incapable of --

(A) appraising the nature of the sexual act;

(B) declining participation in the sexual act; or

(C) communicating unwillingness to engage in the sexual act; is guilty of aggravated sexual assault and shall be punished as a court-martial may direct.

(d) *Aggravated sexual assault of a child.* Any person subject to this chapter who engages in a sexual act with a child who has attained the age of 12 years is guilty of aggravated sexual assault of a child and shall be punished as a court-martial may direct.

(e) *Aggravated sexual contact.* Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (a) (rape) had the sexual contact been a sexual act, is guilty of aggravated sexual contact and shall be punished as a court-martial may direct.

(f) *Aggravated sexual abuse of a child.* Any person subject to this chapter who engages in a lewd act with a child is guilty of aggravated sexual abuse of a child and shall be punished as a court-martial may direct.

(g) *Aggravated sexual contact with a child.* Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (b) (rape of a child) had the sexual contact been a sexual act, is guilty of aggravated sexual contact with a child and shall be punished as a court-martial may direct.

(h) *Abusive sexual contact.* Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (c) (aggravated sexual assault) had the sexual contact been a sexual act, is guilty of abusive sexual contact and shall be punished as a court-martial may direct.

(i) *Abusive sexual contact with a child.* Any person subject to this chapter who engages in or causes sexual contact with

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or by another person, if to do so would violate subsection (d) (aggravated sexual assault of a child) had the sexual contact been a sexual act, is guilty of abusive sexual contact with a child and shall be punished as a court-martial may direct.

(j) *Indecent liberty with a child.* Any person subject to this chapter who engages in indecent liberty in the physical presence of a child --

(1) with the intent to arouse, appeal to, or gratify the sexual desire of any person; or

(2) with the intent to abuse, humiliate, or degrade any person;

is guilty of indecent liberty with a child and shall be punished as a court-martial may direct.

(k) *Indecent act.* Any person subject to this chapter who engages in indecent conduct is guilty of an indecent act and shall be punished as a court-martial may direct.

(l) *Forcible pandering.* Any person subject to this chapter who compels another person to engage in an act of prostitution with another person to be directed to said person is guilty of forcible pandering and shall be punished as a court-martial may direct.

(m) *Wrongful sexual contact.* Any person subject to this chapter who, without legal justification or lawful authorization, engages in sexual contact with another person without that other person's permission is guilty of wrongful sexual contact and shall be punished as a court-martial may direct.

(n) *Indecent exposure.* Any person subject to this chapter who intentionally exposes, in an indecent manner, in any place where the conduct involved may reasonably be expected to be viewed by people other than members of the actor's family or household,

the genitalia, anus, buttocks, or female areola or nipple is guilty of indecent exposure and shall be punished as a court-martial may direct.

(c) *Age of child.* (1) *Twelve years.* In a prosecution under subsection (b) (rape of a child), subsection (g) (aggravated sexual contact with a child), or subsection (j) (indecent liberty with a child), it need not be proven that the accused knew that the other person engaging in the sexual act, contact, or liberty had not attained the age of 12 years. It is not an affirmative defense that the accused reasonably believed that the child had attained the age of 12 years.

(2) *Sixteen years.* In a prosecution under subsection (d) (aggravated sexual assault of a child), subsection (f) (aggravated sexual abuse of a child), subsection (i) (abusive sexual contact with a child), or subsection (j) (indecent liberty with a child), it need not be proven that the accused knew that the other person engaging in the sexual act, contact, or liberty had not attained the age of 16 years. Unlike in paragraph (1), however, it is an affirmative defense that the accused reasonably believed that the child had attained the age of 16 years.

(p) *Proof of threat.* In a prosecution under this section, in proving that the accused made a threat, it need not be proven that the accused actually intended to carry out the threat.

(q) *Marriage.*

(1) *In general.* In a prosecution under paragraph (2) of subsection (c) (aggravated sexual assault), or under subsection (d) (aggravated sexual assault of a child), subsection (f) (aggravated sexual abuse of a child), subsection (i) (abusive sexual contact with a child), subsection (j) (indecent liberty with a child), subsection (m) (wrongful sexual contact), or subsection (n) (indecent exposure),

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it is an affirmative defense that the accused and the other person when they engaged in the sexual act, sexual contact, or sexual conduct were married to each other.

(2) *Definition.* For purposes of this subsection, a marriage is a relationship, recognized by the laws of a competent State or foreign jurisdiction, between the accused and the other person as spouses. A marriage exists until it is dissolved in accordance with the laws of a competent State or foreign jurisdiction.

(3) *Exception.* Paragraph (1) shall not apply if the accused's intent at the time of the sexual conduct is to abuse, humiliate, or degrade any person.

(r) *Consent and mistake of fact as to consent.* Lack of permission is an element of the offense in subsection (m) (wrongful sexual contact). Consent and mistake of fact as to consent are not an issue, or an affirmative defense, in a prosecution under any other subsection, except they are an affirmative defense for the sexual conduct in issue in a prosecution under subsection (a) (rape), subsection (c) (aggravated sexual assault), subsection (e) (aggravated sexual contact), and subsection (h) (abusive sexual contact).

(s) *Other affirmative defenses not precluded.* The enumeration in this section of some affirmative defenses shall not be construed as excluding the existence of others.

(t) *Definitions.* In this section:

(1) *Sexual act.* The term "sexual act" means --

(A) contact between the penis and the vulva, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight; or

(B) the penetration, however slight, of the genital opening of another by a hand or finger or by any object, with an intent to

abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(2) *Sexual contact.* The term "sexual contact" means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person, or intentionally causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, or degrade any person or to arouse or gratify the sexual desire of any person.

(3) *Grievous bodily harm.* The term "grievous bodily harm" means serious bodily injury. It includes fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other severe bodily injuries. It does not include minor injuries such as a black eye or a bloody nose. It is the same level of injury as in section 928 (article 128) of this chapter, and a lesser degree of injury than in section 2246(4) of title 18.

(4) *Dangerous weapon or object.* The term "dangerous weapon or object" means --

(A) any firearm, loaded or not, and whether operable or not;

(B) any other weapon, device, instrument, material, or substance, whether animate or inanimate, that in the manner it is used, or is intended to be used, is known to be capable of producing death or grievous bodily harm; or

(C) any object fashioned or utilized in such a manner as to lead the victim under the circumstances to reasonably believe it to be capable of producing death or grievous bodily harm.

(5) *Force.* The term "force" means action to compel submission of another or to overcome or prevent another's resistance by --

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- (A) the use or display of a dangerous weapon or object;
 - (B) the suggestion of possession of a dangerous weapon or object that is used in a manner to cause another to believe it is a dangerous weapon or object; or
 - (C) physical violence, strength, power, or restraint applied to another person, sufficient that the other person could not avoid or escape the sexual conduct.
- (6) *Threatening or placing that other person in fear.* The term "threatening or placing that other person in fear" under paragraph (3) of subsection (a) (rape), or under subsection (e) (aggravated sexual contact), means a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in the victim or another person being subjected to death, grievous bodily harm, or kidnapping.
- (7) *Threatening or placing that other person in fear.*
- (A) *In general.* The term "threatening or placing that other person in fear" under paragraph (1) (A) of subsection (c) (aggravated sexual assault), or under subsection (h) (abusive sexual contact), means a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in the victim or another being subjected to a lesser degree of harm than death, grievous bodily harm, or kidnapping.
- (B) *Inclusions.* Such lesser degree of harm includes --
- (i) physical injury to another person or to another person's property; or
 - (ii) a threat --
- (I) to accuse any person of a crime;
 - (II) to expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule; or

(III) through the use or abuse of military position, rank, or authority, to affect or threaten to affect, either positively or negatively, the military career of some person.

(8) *Bodily harm*. The term "bodily harm" means any offensive touching of another, however slight.

(9) *Child*. The term "child" means any person who has not attained the age of 16 years.

(10) *Lewd act*. The term "lewd act" means --

(A) the intentional touching, not through the clothing, of the genitalia of another person, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person; or

(B) intentionally causing another person to touch, not through the clothing, the genitalia of any person with an intent to abuse, humiliate or degrade any person, or to arouse or gratify the sexual desire of any person.

(11) *Indecent liberty*. The term "indecent liberty" means indecent conduct, but physical contact is not required. It includes one who with the requisite intent exposes one's genitalia, anus, buttocks, or female areola or nipple to a child. An indecent liberty may consist of communication of indecent language as long as the communication is made in the physical presence of the child. If words designed to excite sexual desire are spoken to a child, or a child is exposed to or involved in sexual conduct, it is an indecent liberty; the child's consent is not relevant.

(12) *Indecent conduct*. The term "indecent conduct" means that form of immorality relating to sexual impurity that is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations. Indecent conduct includes observing, or making

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a videotape, photograph, motion picture, print, negative, slide, or other mechanically, electronically, or chemically reproduced visual material, without another person's consent, and contrary to that other person's reasonable expectation of privacy, of --

(A) that other person's genitalia, anus, or buttocks, or (if that other person is female) that person's areola or nipple; or

(B) that other person while that other person is engaged in a sexual act, sodomy (under section 925 (article 125) of this chapter), or sexual contact.

(13) *Act of prostitution.* The term "act of prostitution" means a sexual act, sexual contact, or lewd act for the purpose of receiving money or other compensation.

(14) *Consent.* The term "consent" means words or overt acts indicating a freely given agreement to the sexual conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission resulting from the accused's use of force, threat of force, or placing another person in fear does not constitute consent. A current or previous dating relationship by itself or the manner of dress of the person involved with the accused in the sexual conduct at issue shall not constitute consent. A person cannot consent to sexual activity if --

(A) under 16 years of age; or

(B) substantially incapable of --

(i) appraising the nature of the sexual conduct at issue due to --

(I) mental impairment or unconsciousness resulting from consumption of alcohol, drugs, a similar substance, or otherwise; or

(II) mental disease or defect that renders the person unable to understand the nature of the sexual conduct at issue;

(ii) physically declining participation in the sexual conduct at issue; or

(iii) physically communicating unwillingness to engage in the sexual conduct at issue.

(15) *Mistake of fact as to consent.* The term "mistake of fact as to consent" means the accused held, as a result of ignorance or mistake, an incorrect belief that the other person engaging in the sexual conduct consented. The ignorance or mistake must have existed in the mind of the accused and must have been reasonable under all the circumstances. To be reasonable, the ignorance or mistake must have been based on information, or lack of it, that would indicate to a reasonable person that the other person consented. Additionally, the ignorance or mistake cannot be based on the negligent failure to discover the true facts. Negligence is the absence of due care. Due care is what a reasonably careful person would do under the same or similar circumstances. The accused's state of intoxication, if any, at the time of the offense is not relevant to mistake of fact. A mistaken belief that the other person consented must be that which a reasonably careful, ordinary, prudent, sober adult would have had under the circumstances at the time of the offense.

(16) *Affirmative defense.* The term "affirmative defense" means any special defense that, although not denying that the accused committed the objective acts constituting the offense charged, denies, wholly, or partially, criminal responsibility for those acts. The accused has the burden of proving the affirmative defense by a preponderance of evidence. After the defense meets this burden, the prosecution shall have the burden of proving

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beyond a reasonable doubt that the affirmative defense did not exist."

b. *Elements.*

(1) Rape.

(a) Rape by using force.

(i) That the accused caused another person, who is of any age, to engage in a sexual act by using force against that other person.

(b) Rape by causing grievous bodily harm.

(i) That the accused caused another person, who is of any age, to engage in a sexual act by causing grievous bodily harm to any person.

(c) Rape by using threats or placing in fear.

(i) That the accused caused another person, who is of any age, to engage in a sexual act by threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping.

(d) Rape by rendering another unconscious.

(i) That the accused caused another person, who is of any age, to engage in a sexual act by rendering that other person unconscious.

(e) Rape by administration of drug, intoxicant, or other similar substance.

(i) That the accused caused another person, who is of any age, to engage in a sexual act by administering to that other person a drug, intoxicant, or other similar substance;

(ii) That the accused administered the drug, intoxicant or other similar substance by force or threat of force or without the knowledge or permission of that other person; and

(iii) That, as a result, that other person's ability to appraise or control conduct was substantially impaired.

(2) *Rape of a child.*

(a) *Rape of a child who has not attained the age of 12 years.*

(i) That the accused engaged in a sexual act with a child;

and

(ii) That at the time of the sexual act the child had not attained the age of 12 years.

(b) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using force.*

(i) That the accused engaged in a sexual act with a child;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by using force against that child.

(c) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by causing grievous bodily harm.*

(i) That the accused engaged in a sexual act with a child;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by causing grievous bodily harm to any person.

(d) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using threats or placing in fear.*

(i) That the accused engaged in a sexual act with a child;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

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(iii) That the accused did so by threatening or placing that child in fear that any person will be subjected to death, grievous bodily harm, or kidnapping.

(e) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by rendering that child unconscious.*

(i) That the accused engaged in a sexual act with a child;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by rendering that child unconscious.

(f) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by administration of drug, intoxicant, or other similar substance.*

(i) That the accused engaged in a sexual act with a child;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) (a) That the accused did so by administering to that child a drug, intoxicant, or other similar substance;

(b) That the accused administered the drug, intoxicant, or other similar substance by force or threat of force or without the knowledge or permission of that child; and

(c) That, as a result, that child's ability to appraise or control conduct was substantially impaired.

(3) *Aggravated sexual assault.*

(a) *Aggravated sexual assault by using threats or placing in fear.*

(i) That the accused caused another person, who is of any age, to engage in a sexual act; and

(ii) That the accused did so by threatening or placing that other person in fear that any person would be subjected to bodily harm or other harm (other than by threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping).

(b) *Aggravated sexual assault by causing bodily harm.*

(i) That the accused caused another person, who is of any age, to engage in a sexual act; and

(ii) That the accused did so by causing bodily harm to another person.

(c) *Aggravated sexual assault upon a person substantially incapacitated or substantially incapable of appraising the act, declining participation, or communicating unwillingness.*

(i) That the accused engaged in a sexual act with another person, who is of any age; and

(Note: add one of the following elements)

(ii) That the other person was substantially incapacitated;

(iii) That the other person was substantially incapable of appraising the nature of the sexual act;

(iv) That the other person was substantially incapable of declining participation in the sexual act; or

(v) That the other person was substantially incapable of communicating unwillingness to engage in the sexual act.

(4) *Aggravated sexual assault of a child who has attained the age of 12 years but has not attained the age of 16 years.*

(a) That the accused engaged in a sexual act with a child; and

(b) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years.

(5) *Aggravated sexual contact.*

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(a) *Aggravated sexual contact by using force.*

(i) (a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(ii) That the accused did so by using force against that other person.

(b) *Aggravated sexual contact by causing grievous bodily harm.*

(i) (a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(ii) That the accused did so by causing grievous bodily harm to any person.

(c) *Aggravated sexual contact by using threats or placing in fear.*

(i) (a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(ii) That the accused did so by threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping.

(d) *Aggravated sexual contact by rendering another unconscious.*

(i) (a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(ii) That the accused did so by rendering that other person unconscious.

(e) *Aggravated sexual contact by administration of drug, intoxicant, or other similar substance.*

(i) (a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(ii) (a) That the accused did so by administering to that other person a drug, intoxicant, or other similar substance;

(b) That the accused administered the drug, intoxicant, or other similar substance by force or threat of force or without the knowledge or permission of that other person; and

(c) That, as a result, that other person's ability to appraise or control conduct was substantially impaired.

(6) *Aggravated sexual abuse of a child.*

(a) That the accused engaged in a lewd act; and

(b) That the act was committed with a child who has not attained the age of 16 years.

(7) *Aggravated Sexual Contact with a Child.*

(a) *Aggravated sexual contact with a child who has not attained the age of 12 years.*

(i) (a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact the child had not attained the age of 12 years.

(b) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using force.*

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(i) (a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by using force against that child.

(c) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by causing grievous bodily harm.*

(i) (a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by causing grievous bodily harm to any person.

(d) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using threats or placing in fear.*

(i) (a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by threatening or placing that child or that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping.

(e) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by rendering another or that child unconscious.*

(i)(a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by rendering that child or that other person unconscious.

(f) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by administration of drug, intoxicant, or other similar substance.*

(i)(a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii)(a) That the accused did so by administering to that child or that other person a drug, intoxicant, or other similar substance;

(b) That the accused administered the drug, intoxicant, or other similar substance by force or threat of force or without the knowledge or permission of that child or that other person; and

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(c) That, as a result, that child's or that other person's ability to appraise or control conduct was substantially impaired.

(8) *Abusive sexual contact.*

(a) Abusive sexual contact by using threats or placing in fear.

(i) (a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(ii) That the accused did so by threatening or placing that other person in fear that any person would be subjected to bodily harm or other harm (other than by threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping).

(b) *Abusive sexual contact by causing bodily harm.*

(i) (a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(ii) That the accused did so by causing bodily harm to another person.

(c) *Abusive sexual contact upon a person substantially incapacitated or substantially incapable of appraising the act, declining participation, or communicating unwillingness.*

(i) (a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(Note: add one of the following elements)

(ii) That the other person was substantially incapacitated;

(iii) That the other person was substantially incapable of appraising the nature of the sexual contact;

(iv) That the other person was substantially incapable of declining participation in the sexual contact; or

(v) That the other person was substantially incapable of communicating unwillingness to engage in the sexual contact.

(9) *Abusive sexual contact with a child.*

(i) (a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact the child had attained the age of 12 years but had not attained the age of 16 years.

(10) *Indecent liberty with a child.*

(a) That the accused committed a certain act or communication;

(b) That the act or communication was indecent;

(c) That the accused committed the act or communication in the physical presence of a certain child;

(d) That the child was under 16 years of age; and

(e) That the accused committed the act or communication with the intent to:

(i) arouse, appeal to, or gratify the sexual desires of any person; or

(ii) abuse, humiliate, or degrade any person.

(11) *Indecent act.*

(a) That the accused engaged in certain conduct; and

(b) That the conduct was indecent conduct.

(12) *Forcible pandering.*

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(a) That the accused compelled a certain person to engage in an act of prostitution; and

(b) That the accused directed another person to said person, who then engaged in an act of prostitution.

(13) *Wrongful sexual contact.*

(a) That the accused had sexual contact with another person;

(b) That the accused did so without that other person's permission; and

(c) That the accused had no legal justification or lawful authorization for that sexual contact.

(14) *Indecent exposure.*

(a) That the accused exposed his or her genitalia, anus, buttocks, or female areola or nipple;

(b) That the accused's exposure was in an indecent manner;

(c) That the exposure occurred in a place where the conduct involved could reasonably be expected to be viewed by people other than the accused's family or household; and

(d) That the exposure was intentional.

c. *Explanation.*

(1) *Definitions.* The terms are defined in Paragraph 45a.(t), *supra*.

(2) *Character of victim.* See Mil. R. Evid. 412 concerning rules of evidence relating to the character of the victim of an alleged sexual offense.

(3) *Indecent.* In conduct cases, "indecent" generally signifies that form of immorality relating to sexual impurity that is not only grossly vulgar, obscene, and repugnant to common propriety, but also tends to excite lust and deprave the morals with respect to sexual relations. Language is indecent if it tends reasonably to corrupt morals or incite libidinous thoughts. The language must violate community standards.

d. *Lesser included offenses.* The following lesser included offenses are based on internal cross-references provided in the statutory text of Article 120. See subsection (e) for a further listing of possible lesser included offenses.

(1) *Rape.*

(a) Article 120 -- Aggravated sexual contact

(b) Article 134 -- Assault with intent to commit rape

(c) Article 128 -- Aggravated assault, Assault, Assault consummated by a battery

(d) Article 80 -- Attempts

(2) *Rape of a child.*

(a) Article 120 -- Aggravated sexual contact with a child; Indecent act

(b) Article 134 -- Assault with intent to commit rape

(c) Article 128 -- Aggravated assault; Assault; Assault consummated by a battery; Assault consummated by a battery upon a child under 16

(d) Article 80 -- Attempts

(3) *Aggravated sexual assault.*

(a) Article 120 -- Abusive sexual contact

(b) Article 128 -- Aggravated assault, Assault, Assault consummated by a battery

(c) Article 80 -- Attempts

(4) *Aggravated sexual assault of a child.*

(a) Article 120 -- Abusive sexual contact with a child; Indecent act

(b) Article 128 -- Aggravated assault; assault; Assault consummated by a battery; Assault consummated by a battery upon a child under 16

(c) Article 80 -- Attempts

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- (5) *Aggravated sexual contact.*
 - (a) Article 128 -- Aggravated assault; Assault; Assault consummated by a battery
 - (b) Article 80 -- Attempts
- (6) *Aggravated sexual abuse of a child.*
 - (a) Article 120 -- Indecent act
 - (b) Article 128 -- Assault; Assault consummated by a battery; Assault consummated by a battery upon a child under 16
 - (c) Article 80 -- Attempts
- (7) *Aggravated sexual contact with a child.*
 - (a) Article 120 -- Indecent act
 - (b) Article 128 -- Assault; Assault consummated by a battery; Assault consummated by a battery upon a child under 16
 - (c) Article 80 -- Attempts
- (8) *Abusive sexual contact.*
 - (a) Article 128 -- Assault; Assault consummated by a battery
 - (b) Article 80 -- Attempts
- (9) *Abusive sexual contact with a child.*
 - (a) Article 120 -- Indecent act
 - (b) Article 128 -- Assault; Assault consummated by a battery; Assault consummated by a battery upon a child under 16
 - (c) Article 80 -- Attempts
- (10) *Indecent liberty with a child.*
 - (a) Article 120 -- Indecent act
 - (b) Article 80 -- Attempts
- (11) *Indecent act.* Article 80 -- Attempts
- (12) *Forcible pandering.* Article 80 -- Attempts
- (13) *Wrongful sexual contact.* Article 80 -- Attempts
- (14) *Indecent exposure.* Article 80 -- Attempts
- e. *Additional lesser included offenses.* Depending on the factual circumstances in each case, to include the type of act

and level of force involved, the following offenses may be considered lesser included in addition to those offenses listed in subsection d. (See subsection (d) for a listing of the offenses that are specifically cross-referenced within the statutory text of Article 120.) The elements of the proposed lesser included offense should be compared with the elements of the greater offense to determine if the elements of the lesser offense are derivative of the greater offense and vice versa. See Appendix 23 for further explanation of lesser included offenses.

(1)(a) *Rape by using force.* Article 120 -- Indecent act; Wrongful sexual contact

(1)(b) *Rape by causing grievous bodily harm.* Article 120 -- Aggravated sexual assault by causing bodily harm; Abusive sexual contact by causing bodily harm; Indecent act; Wrongful sexual contact

(1)(c) *Rape by using threats or placing in fear.* Article 120 -- Aggravated sexual assault by using threats or placing in fear; Abusive sexual contact by using threats or placing in fear; Indecent act; Wrongful sexual contact

(1)(d) *Rape by rendering another unconscious.* Article 120 -- Aggravated sexual assault upon a person substantially incapacitated; Abusive sexual contact upon a person substantially incapacitated; Indecent act; Wrongful sexual contact

(1)(e) *Rape by administration of drug, intoxicant, or other similar substance.* Article 120 -- Aggravated sexual assault upon a person substantially incapacitated; Abusive sexual contact upon a person substantially incapacitated; Indecent act; Wrongful sexual contact

(2)(a) -- (f) *Rape of a child who has not attained 12 years; rape of a child who has attained the age of 12 years but has not attained the age of 16 years.* Article 120 -- Aggravated sexual

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assault of a child; Aggravated sexual abuse of a child; Abusive sexual contact with a child; Indecent liberty with a child; Wrongful sexual contact

(3) *Aggravated sexual assault.* Article 120 -- Wrongful sexual contact; Indecent act

(4) *Aggravated sexual assault of a child.* Article 120 -- Aggravated sexual abuse of a child; Indecent liberty with a child; Wrongful sexual contact

(5) (a) *Aggravated sexual contact by force.* Article 120 -- Indecent act; Wrongful sexual contact

(5) (b) *Aggravated sexual contact by causing grievous bodily harm.* Article 120 -- Abusive sexual contact by causing bodily harm; Indecent act; Wrongful sexual contact

(5) (c) *Aggravated sexual contact by using threats or placing in fear.* Article 120 -- Abusive sexual contact by using threats or placing in fear; Indecent act; Wrongful sexual contact

(5) (d) *Aggravated sexual contact by rendering another unconscious.* Article 120 -- Abusive sexual contact upon a person substantially incapacitated; Indecent act; Wrongful sexual contact

(5) (e) *Aggravated sexual contact by administration of drug, intoxicant, or other similar substance.* Article 120 -- Abusive sexual contact upon a person substantially incapacitated; Indecent act; Wrongful sexual contact

(6) *Aggravated sexual abuse of a child.* Article 120 -- Aggravated sexual contact with a child; Aggravated sexual abuse of a child; Indecent liberty with a child; Wrongful sexual contact

(7) *Aggravated sexual contact with a child.* Article 120 -- Abusive sexual contact with a child; Indecent liberty with a child; Wrongful sexual contact

(8) *Abusive sexual contact.* Article 120 -- Wrongful sexual contact; Indecent act

(9) *Abusive sexual contact with a child.* Article 120 --
Indecent liberty with a child; Wrongful sexual contact

(10) *Indecent liberty with a child.* Article 120 -- Wrongful
sexual contact

f. *Maximum punishment.*

(1) *Rape and rape of a child.* Death or such other punishment
as a court martial may direct.

(2) *Aggravated sexual assault.* Dishonorable discharge,
forfeiture of all pay and allowances, and confinement for 30 years.

(3) *Aggravated sexual assault of a child who has attained
the age of 12 years but has not attained the age of 16 years,
aggravated sexual abuse of a child, aggravated sexual contact,
and aggravated sexual contact with a child.* Dishonorable
discharge, forfeiture of all pay and allowances, and confinement
for 20 years.

(4) *Abusive sexual contact with a child and indecent liberty
with a child.* Dishonorable discharge, forfeiture of all pay and
allowances, and confinement for 15 years.

(5) *Abusive sexual contact.* Dishonorable discharge,
forfeiture of all pay and allowances, and confinement for 7 years.

(6) *Indecent act or forcible pandering.* Dishonorable
discharge, forfeiture of all pay and allowances, and confinement
for 5 years.

(7) *Wrongful sexual contact or indecent exposure.*
Dishonorable discharge, forfeiture of all pay and allowances,
and confinement for 1 year.

g. *Sample specifications.*

(1) *Rape.*

(a) *Rape by using force.*

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(i) *Rape by use or display of dangerous weapon or object.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____, by (using a dangerous weapon or object, to wit: _____ against (him) (her)) (displaying a dangerous weapon or object, to wit: _____ to (him) (her)).

(ii) *Rape by suggestion of possession of dangerous weapon or object.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____, by the suggestion of possession of a dangerous weapon or an object that was used in a manner to cause (him) (her) to believe it was a dangerous weapon or object.

(iii) *Rape by using physical violence, strength, power, or restraint to any person.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____, by using (physical violence) (strength) (power) (restraint applied to _____), sufficient that (he) (she) could not avoid or escape the sexual conduct.

(b) *Rape by causing grievous bodily harm.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____, by causing grievous bodily harm upon (him) (her) (_____), to wit: a (broken leg) (deep cut) (fractured skull) (_____).

(c) *Rape by using threats or placing in fear.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____, by [threatening] [placing (him)(her) in fear] that (he)(she) (_____) will be subjected to (death)(grievous bodily harm) (kidnapping) by _____.

(d) *Rape by rendering another unconscious.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____, by rendering (him)(her) unconscious.

(e) *Rape by administration of drug, intoxicant, or other similar substance.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____, by administering to (him)(her) a drug, intoxicant, or other similar substance, (by force) (by threat of force) (without (his)(her) knowledge or permission), and thereby substantially impaired (his)(her) ability to [(appraise) (control)][(his) (her)] conduct.

(2) *Rape of a child.*

(a) *Rape of a child who has not attained the age of 12 years.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____ with _____, a child who had not attained the age of 12 years.

(b) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using force.*

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(i) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by use or display of dangerous weapon or object.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____, with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years, by (using a dangerous weapon or object, to wit: _____ against (him) (her)) (displaying a dangerous weapon or object, to wit: _____ to (him) (her)).

(ii) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by suggestion of possession of dangerous weapon or object.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____, with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years, by the suggestion of possession of a dangerous weapon or an object that was used in a manner to cause (him) (her) to believe it was a dangerous weapon or object.

(iii) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using physical violence, strength, power, or restraint to any person.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____, with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years, by using (physical violence) (strength) (power) (restraint applied to _____) sufficient that (he) (she) could not avoid or escape the sexual conduct.

(c) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by causing grievous bodily harm.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____, with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years, by causing grievous bodily harm upon (him) (her) (_____), to wit: a (broken leg) (deep cut) (fractured skull) (_____).

(d) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using threats or placing in fear.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____, with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years, by [threatening] [placing (him) (her) in fear] that (he) (she) (_____) would be subjected to (death) (grievous bodily harm) (kidnapping) by _____.

(e) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by rendering that child unconscious.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____, with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years, by rendering (him) (her) unconscious.

(f) *Rape of a child who has attained the age of 12 years*

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but has not attained the age of 16 years by administration of drug, intoxicant, or other similar substance.

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____, with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years, by administering to (him) (her) a drug, intoxicant, or other similar substance (by force) (by threat of force) (without (his) (her) knowledge or permission), and thereby substantially impaired (his) (her) ability to [(appraise) (control)] (his) (her) conduct.

(3) *Aggravated sexual assault.*

(a) *Aggravated sexual assault by using threats or placing in fear.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____, by [threatening] [placing(him) (her) in fear of] [(physical injury to _____) (injury to _____'s property) (accusation of crime) (exposition of secret) (abuse of military position) (_____)].

(b) *Aggravated sexual assault by causing bodily harm.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____, by causing bodily harm upon (him) (her) (_____), to wit: _____.

(c) *Aggravated sexual assault upon a person substantially incapacitated or substantially incapable of appraising the act, declining participation, or communicating unwillingness.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20____, engage in a sexual act, to wit: _____ with _____, who was (substantially incapacitated) [substantially incapable of (appraising the nature of the sexual act) (declining participation in the sexual act) (communicating unwillingness to engage in the sexual act)].

(4) *Aggravated sexual assault of a child who has attained the age of 12 years but has not attained the age of 16 years.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20____, engage in a sexual act, to wit: _____ with _____, who had attained the age of 12 years, but had not attained the age of 16 years.

(5) *Aggravated sexual contact.*

(a) *Aggravated sexual contact by using force.*

(i) *Aggravated sexual contact by use or display of dangerous weapon or object.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20____, [(engage in sexual contact, to wit: _____ with _____) (cause _____ to engage in sexual contact, to wit: _____, with _____) (cause sexual contact with or by _____, to wit: _____)] by (using a dangerous weapon or object, to wit: _____ against (him) (her)) (displaying a dangerous weapon or object, to wit: _____ to (him) (her)).

(ii) *Aggravated sexual contact by suggestion of possession of dangerous weapon or object.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20____, [(engage in sexual contact, to wit:

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____ with ____ (cause ____ to engage in sexual contact, to wit: ____ , with ____ (cause sexual contact with or by ____ , to wit: ____)] by the suggestion of possession of a dangerous weapon or an object that was used in a manner to cause (him) (her) (____) to believe it was a dangerous weapon or object.

(iii) *Aggravated sexual contact by using physical violence, strength, power, or restraint to any person.*

In that ____ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about ____ 20____, [(engage in sexual contact, to wit: ____ with ____ (cause ____ to engage in sexual contact, to wit: ____ , with ____ (cause sexual contact with or by ____ , to wit: ____)] by using (physical violence) (strength) (power) (restraint applied to ____), sufficient that (he) (she) (____) could not avoid or escape the sexual conduct.

(b) *Aggravated sexual contact by causing grievous bodily harm.*

In that ____ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about ____ 20____, [(engage in sexual contact, to wit: ____ with ____ (cause ____ to engage in sexual contact, to wit: ____ , with ____ (cause sexual contact with or by ____ , to wit: ____)] by causing grievous bodily harm upon (him) (her) (____), to wit: a (broken leg) (deep cut) (fractured skull) (____).

(c) *Aggravated sexual contact by using threats or placing in fear.*

In that ____ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about ____ 20____, [(engage in sexual contact, to wit: ____ with ____ (cause ____ to engage in sexual contact, to wit: ____ ,

with _____) (cause sexual contact with or by _____, to wit: _____) by [(threatening (him) (her) (_____) [(placing (him) (her) (_____) in fear] that (he) (she) (_____) will be subjected to (death) (grievous bodily harm) (kidnapping) by _____.]

(d) *Aggravated sexual contact by rendering another unconscious.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____) (cause _____ to engage in sexual contact, to wit: _____, with _____) (cause sexual contact with or by _____, to wit: _____)] by rendering (him) (her) (_____) unconscious.

(e) *Aggravated sexual contact by administration of drug, intoxicant, or other similar substance.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____) (cause _____ to engage in sexual contact, to wit: _____, with _____) (cause sexual contact with or by _____, to wit: _____)] by administering to (him) (her) (_____) a drug, intoxicant, or other similar substance, (by force) (by threat of force) (without (his) (her) (_____) knowledge or permission), and thereby substantially impaired (his) (her) (_____) ability to [(appraise) (control)] [(his) (her)] conduct.

(6) *Aggravated sexual abuse of a child.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a lewd act, to wit: _____ with _____, a child who had not attained the age of 16 years.

(7) *Aggravated sexual contact with a child.*

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(a) *Aggravated sexual contact with a child who has not attained the -- age of 12 years.*

In that _____ (personal jurisdiction data), did (at/on board--location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had not attained the age of 12 years) (cause _____ to engage in sexual contact, to wit: _____, with _____, a child who had not attained the age of 12 years) (cause sexual contact with or by _____, a child who had not attained the age of 12 years, to wit: _____)].

(b) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using force.*

(i) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by use or display of dangerous weapon or object.*

In that _____ (personal jurisdiction data), did (at/on board--location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years) (cause _____ to engage in sexual contact, to wit: _____, with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years) (cause sexual contact with or by _____, a child who had attained the age of 12 years, but had not attained the age of 16 years, to wit: _____)] by (using a dangerous weapon or object, to wit: _____ against (him) (her) (_____) (displaying a dangerous weapon or object, to wit: _____ to (him) (her) (_____)).

(ii) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by suggestion of possession of dangerous weapon or object.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years) (cause _____ to engage in sexual contact, to wit: _____, with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years) (cause sexual contact with or by _____, a child who had attained the age of 12 years, but had not attained the age of 16 years, to wit: _____)] by the suggestion of possession of a dangerous weapon or an object that was used in a manner to cause (him) (her) (_____) to believe it was a dangerous weapon or object.

(iii) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using physical violence, strength, power, or restraint to any person.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years) (cause _____ to engage in sexual contact, to wit: _____, with _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years) (cause sexual contact with or by _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years, to wit: _____)] by using (physical violence) (strength) (power) (restraint applied to _____) sufficient that (he) (she) (_____) could not avoid or escape the sexual conduct.

(c) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by causing grievous bodily harm.*

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In that _____ (personal jurisdiction data), did (at/on board--location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years)(cause _____ to engage in sexual contact, to wit: _____, with _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years) (cause sexual contact with or by _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years, to wit: _____)] by causing grievous bodily harm upon (him)(her)(_____), to wit: a (broken leg)(deep cut)(fractured skull)(_____).

(d) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using threats or placing in fear.*

In that _____ (personal jurisdiction data), did (at/on board--location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years)(cause _____ to engage in sexual contact, to wit: _____, with _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years) (cause sexual contact with or by _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years, to wit: _____)] by [threatening] [placing (him)(her)(_____) in fear] that (he)(she)(_____) will be subjected to (death) (grievous bodily harm)(kidnapping) by _____.

(e) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by rendering that child or another unconscious.*

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20____, [(engage in sexual contact, to wit: ____ with ____, a child who had not attained the age of 12 years, but had not attained the age of 16 years)(cause ____ to engage in sexual contact, to wit: ____ , with ____, a child who had not attained the age of 12 years, but had not attained the age of 16 years) (cause sexual contact with or by ____, a child who had not attained the age of 12 years, but had not attained the age of 16 years, to wit: ____)] by rendering (him) (her) (____) unconscious.

(f) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by administration of drug, intoxicant, or other similar substance.*

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20____, [(engage in sexual contact, to wit: ____ with ____, a child who had not attained the age of 12 years but had not attained the age of 16 years)(cause ____ to engage in sexual contact, to wit: ____, with ____, a child who had not attained the age of 12 years but had not attained the age of 16 years) (cause sexual contact with or by ____, a child who had not attained the age of 12 years but had not attained the age of 16 years, to wit: ____)] by administering to (him) (her) (____) a drug, intoxicant, or other similar substance (by force) (by threat of force) (without (his) (her) (____) knowledge or permission), and thereby substantially impaired (his) (her) (____) ability to [(appraise) (control)][(his) (her)] conduct.

(8) *Abusive sexual contact.*

(a) *Abusive sexual contact by using threats or placing in fear.*

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In that _____ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____) (cause _____ to engage in sexual contact, to wit: _____, with _____) (cause sexual contact with or by _____, to wit: _____)] by [(threatening) (placing (him)(her) (_____) in fear of)] [(physical injury to _____) (injury to _____'s property) (accusation of crime) (exposition of secret) (abuse of military position) (_____)].

(b) *Abusive sexual contact by causing bodily harm.*

In that _____ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____) (cause _____ to engage in sexual contact, to wit: _____, with _____) (cause sexual contact with or by _____, to wit: _____)] by causing bodily harm upon (him)(her) (_____), to wit: (_____) .

(c) *Abusive sexual contact by engaging in a sexual act with a person substantially incapacitated or substantially incapable of appraising the act, declining participation, or substantially incapable of communicating unwillingness.*

In that _____ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____) (cause _____ to engage in sexual contact, to wit: _____, with _____) (cause sexual contact with or by _____, to wit: _____)] while (he)(she) (_____) was [substantially incapacitated] [substantially incapable of (appraising the nature of the sexual contact) (declining participation in the sexual contact) (communicating unwillingness to engage in the sexual contact)].

(9) *Abusive sexual contact with a child.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had attained the age of 12 years but had not attained the age of 16 years) (cause _____ to engage in sexual contact, to wit: _____, with _____, a child who had attained the age of 12 years but had not attained the age of 16 years) (cause sexual contact with or by _____, a child who had attained the age of 12 years but had not attained the age of 16 years, to wit: _____)].

(10) *Indecent liberties with a child.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, (take indecent liberties) (engage in indecent conduct) in the physical presence of _____, a (female) (male) under 16 years of age, by (communicating the words: to wit: _____) (exposing one's private parts, to wit: _____) (_____), with the intent to [(arouse) (appeal to) (gratify) the (sexual desire) of the _____ (or _____)] [(abuse) (humiliate) (degrade) _____].

(11) *Indecent act.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, wrongfully commit indecent conduct, to wit _____.

(12) *Forcible pandering.*

In that _____ (personal jurisdiction data), did (at/on board—location), (subject-matter jurisdiction data, if required), on or about _____ 20_____, compel _____ to engage in [(a sexual

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act)(sexual contact) (lewd act), to wit: _____] for the purpose of receiving money or other compensation with _____ (a) person(s) to be directed to (him)(her) by the said _____.

(13) *Wrongful sexual contact.*

In that _____ (personal jurisdiction data), did (at/on board-location), (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in sexual contact with _____, to wit: _____, and such sexual contact was without legal justification or lawful authorization and without the permission of _____.

(14) *Indecent exposure.*

In that _____ (personal jurisdiction data), did (at/on board-location), (subject-matter jurisdiction data, if required), on or about _____ 20_____, intentionally (expose in an indecent manner (his) (her) (_____) (_____) while (at the barracks window) (in a public place) (_____).

(e) Paragraph 50, Article 124 -- Maiming, paragraph e. is amended to read as follows:

"e. *Maximum Punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years."

(f) Paragraph 51, Article 125 -- Sodomy, paragraph d. is amended by deleting the following lesser included offenses under paragraphs d.(1)(b); d.(2)(c); and d.(3)(a), and replacing them, respectively, with the following:

"(b) Article 134 -- indecent liberty with a child"

"(c) Article 134 -- indecent assault"

"(a) Article 134 -- indecent acts with another"

(g) Paragraph 51, Article 125 -- Sodomy, paragraph d. is amended by adding at the end of paragraph d. the following note:

"(Note: Consider lesser included offenses under Art. 120 depending on the factual circumstances in each case.)"

(h) Paragraph 54, Article 128 -- Assault, paragraph b.(4) (a) is amended to read as follows:

"(a) Assault with a dangerous weapon or other means of force likely to produce death or grievous bodily harm.

(i) That the accused attempted to do, offered to do, or did bodily harm to a certain person;

(ii) That the accused did so with a certain weapon, means, or force;

(iii) That the attempt, offer, or bodily harm was done with unlawful force or violence; and

(iv) That the weapon, means, or force was used in a manner likely to produce death or grievous bodily harm.

(Note: Add any of the following as applicable)

(v) That the weapon was a loaded firearm.

(vi) That the person was a child under the age of 16 years."

(i) Paragraph 54, Article 128 -- Assault, paragraph b.(4) (b) is amended to read as follows:

"(b) Assault in which grievous bodily harm is intentionally inflicted.

(i) That the accused assaulted a certain person;

(ii) That grievous bodily harm was thereby inflicted upon such person;

(iii) That the grievous bodily harm was done with unlawful force or violence; and

(iv) That the accused, at the time, had the specific intent to inflict grievous bodily harm.

(Note: Add any of the following as applicable)

(v) That the injury was inflicted with a loaded firearm.

(vi) That the person was a child under the age of 16 years."

(j) Paragraph 54, Article 128 -- Assault, paragraph c.(4) (a) is amended by adding new paragraph c.(4) (a) (v) after c.(4) (a) (iv),

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to read as follows:

"(v) *When committed upon a child under 16 years of age.*

The maximum punishment is increased when aggravated assault with a dangerous weapon or means likely to produce death or grievous bodily harm is inflicted upon a child under 16 years of age. Knowledge that the person assaulted was under the age of 16 years is not an element of the offense."

(k) Paragraph 54, Article 128 -- Assault, paragraph c.(4)(b) is amended by adding new paragraph c.(4)(b)(iv), to read as follows:

"(iv) *When committed upon a child under 16 years of age.*

The maximum punishment is increased when aggravated assault with intentional infliction of grievous bodily harm is inflicted upon a child under 16 years of age. Knowledge that the person assaulted was under the age of 16 years is not an element of the offense."

(l) Paragraph 54, Article 128 -- Assault, paragraph (d)(6) is amended to read as follows:

"(6) *Assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm.*
Article 128 -- simple assault; assault consummated by a battery; (when committed upon a child under the age of 16 years; assault consummated by a battery upon a child under the age of 16 years)."

(m) Paragraph 54, Article 128 -- Assault, paragraph d.(7) is amended to read as follows:

"(7) *Assault in which grievous bodily harm is intentionally inflicted.* Article 128 -- simple assault; assault consummated by a battery; assault with a dangerous weapon; (when committed upon a child under the age of 16 years -- assault consummated by a battery upon a child under the age of 16 years)."

(n) Paragraph 54, Article 128 -- Assault, paragraph e.(8) is amended to read as follows:

"(8) Aggravated assault with a dangerous weapon or other means of force to produce death or grievous bodily harm."

After current paragraph (a), insert paragraph (b) as follows below, and redesignate (b) as paragraph (c):

"(b) Aggravated assault with a dangerous weapon or other means of force to produce death or grievous bodily harm when committed upon a child under the age of 16 years. Dishonorable discharge, total forfeitures, and confinement for 5 years."

(c) Paragraph 54, Article 128 -- Assault, paragraph (e) (9) is amended to read as follows:

"(9) Aggravated assault in which grievous bodily harm is intentionally inflicted."

After current paragraph (a), insert paragraph (b) as follows below, and redesignate paragraph (b) as paragraph (c):

"(b) Aggravated assault in which grievous bodily harm is intentionally inflicted when committed upon a child under the age of 16 years. Dishonorable discharge, total forfeitures, and confinement for 8 years."

(p) Paragraph 54, Article 128 -- Assault, paragraph (f) (8) is amended to read as follows:

"(8) Assault, aggravated—with a dangerous weapon, means or force.

In that ____ (personal jurisdiction data), did, (at/on board—location) (subject matter jurisdiction data, if required), on or about ____ 20____, commit an assault upon ____ (a child under the age of 16 years) by (shooting) (pointing) (striking) (cutting) (____) (at him/her) (him/her) (in) (on) (the ____) with (a dangerous weapon) (a (means) (force) likely to produce death or grievous bodily harm), to wit: a (loaded firearm) (pickax) (bayonet) (club) (____)."

(q) Paragraph 54, Article 128 -- Assault, paragraph (f) (9) is amended to read as follows:

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"(9) *Assault, aggravated-inflicting grievous bodily harm.*

In that _____ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about _____ 20____, commit an assault upon _____ (a child under the age of 16 years) by (shooting) (striking) (cutting) (_____) (him/her) (on) the _____ with a (loaded firearm) (club) (rock) (brick) (_____) and did thereby intentionally inflict grievous bodily harm upon him/her, to wit: a (broken leg) (deep cut) (fractured skull) (_____) ."

(r) Paragraph 64, Article 134 -- (Assault -- with intent to commit murder, voluntary manslaughter, rape, robbery, sodomy, arson, burglary, or housebreaking), paragraph c.(4), first sentence, is amended to read as follows:

"In assault with intent to commit rape, the accused must have intended to complete the offense."

(s) Paragraph 64, Article 134 -- (Assault -- with intent to commit murder, voluntary manslaughter, rape, robbery, sodomy, arson, burglary, or housebreaking), is amended by deleting the following lesser included offense under paragraph d.(3)(b):

"(b) Article 134 -- indecent assault"

(t) New paragraph 68a, Article 134 -- (Child endangerment) is inserted:

"68a. Article 134 -- (Child endangerment)

a. *Text.* See paragraph 60.

b. *Elements.*

(1) That the accused had a duty for the care of a certain child;

(2) That the child was under the age of 16 years;

(3) That the accused endangered the child's mental or physical health, safety, or welfare through design or culpable negligence; and

(4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *In general.* This offense is intended to prohibit and therefore deter child endangerment through design or culpable negligence.

(2) *Design.* Design means on purpose, intentionally, or according to plan and requires specific intent to endanger the child.

(3) *Culpable negligence.* Culpable negligence is a degree of carelessness greater than simple negligence. It is a negligent act or omission accompanied by a culpable disregard for the foreseeable consequences to others of that act or omission. In the context of this offense, culpable negligence may include acts that, when viewed in the light of human experience, might foreseeably result in harm to a child, even though such harm would not necessarily be the natural and probable consequences of such acts. In this regard, the age and maturity of the child, the conditions surrounding the neglectful conduct, the proximity of assistance available, the nature of the environment in which the child may have been left, the provisions made for care of the child, and the location of the parent or adult responsible for the child relative to the location of the child, among others, may be considered in determining whether the conduct constituted culpable negligence.

(4) *Harm.* Actual physical or mental harm to the child is not required. The offense requires that the accused's actions reasonably could have caused physical or mental harm or

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suffering. However, if the accused's conduct does cause actual physical or mental harm, the potential maximum punishment increases. See Paragraph 54(c)(4)(a)(iii) for an explanation of "grievous bodily harm".

(5) *Endanger.* "Endanger" means to subject one to a reasonable probability of harm.

(6) *Age of victim as a factor.* While this offense may be committed against any child under 16, the age of the victim is a factor in the culpable negligence determination. Leaving a teenager alone for an evening may not be culpable (or even simple) negligence; leaving an infant or toddler for the same period might constitute culpable negligence. On the other hand, leaving a teenager without supervision for an extended period while the accused was on temporary duty outside commuting distance might constitute culpable negligence.

(7) *Duty required.* The duty of care is determined by the totality of the circumstances and may be established by statute, regulation, legal parent-child relationship, mutual agreement, or assumption of control or custody by affirmative act. When there is no duty of care of a child, there is no offense under this paragraph. Thus, there is no offense when a stranger makes no effort to feed a starving child or an individual/neighbor not charged with the care of a child does not prevent the child from running and playing in the street.

d. *Lesser included offenses.*

(1) *Child Endangerment by Design.* Article 134 -- Child endangerment by culpable negligence

(2) Article 80 -- Attempts

e. *Maximum punishment.*

(1) *Endangerment by design resulting in grievous bodily*

harm. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 8 years.

(2) *Endangerment by design resulting in harm.*

Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(3) *Other cases by design.* Dishonorable discharge, forfeiture of all pay and allowances and confinement for 4 years.

(4) *Endangerment by culpable negligence resulting in grievous bodily harm.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(5) *Endangerment by culpable negligence resulting in harm.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(6) *Other cases by culpable negligence.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

f. *Sample specification.*

(1) *Resulting in grievous bodily harm.*

In that _____ (personal jurisdiction data), (at/on board—location) (subject matter jurisdiction data, if required) on or about _____, 20____, had a duty for the care of _____, a child under the age of 16 years and did endanger the (mental health) (physical health) (safety) (welfare) of said _____, by (leaving the said _____ unattended in his quarters for over _____ hours/days with no adult present in the home) (by failing to obtain medical care for the said _____'s diabetic condition) (_____), and that such conduct (was by design) (constituted culpable negligence) (which resulted in grievous bodily harm, to wit:) (broken leg) (deep cut) (fractured skull) (_____) .

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(2) *Resulting in harm.*

In that _____ (personal jurisdiction data), (at/on board—location) (subject matter jurisdiction data, if required) on or about _____, 20_____, had a duty for the care of _____, a child under the age of 16 years, and did endanger the (mental health) (physical health) (safety) (welfare) of said _____, by (leaving the said _____ unattended in his quarters for over _____ hours/days with no adult present in the home) (by failing to obtain medical care for the said _____'s diabetic condition) (_____), and that such conduct (was by design) (constituted culpable negligence) (which resulted in (harm, to wit:) (a black eye) (bloody nose) (minor cut) (_____).

(3) *Other cases.*

In that _____ (personal jurisdiction data), (at/on board—location) (subject matter jurisdiction data, if required) on or about _____, 20_____, was responsible for the care of _____, a child under the age of 16 years, and did endanger the (mental health) (physical health) (safety) (welfare) of said _____, by (leaving the said _____ unattended in his quarters for over _____ hours/days with no adult present in the home) (by failing to obtain medical care for the said _____'s diabetic condition) (_____), and that such conduct (was by design) (constituted culpable negligence)."

(u) Paragraph 63, Article 134 -- (Assault-indecent) is deleted.

(v) Paragraph 87, Article 134 -- (Indecent acts or liberties with a child) is deleted.

(w) Paragraph 88, Article 134 -- (Indecent exposure) is deleted.

(x) Paragraph 90, Article 134 -- (Indecent acts with another) is deleted.

(y) Paragraph 89, Article 134 -- (Indecent language), paragraph c. is amended to read as follows:

"c. *Explanation.* "Indecent" language is that which is grossly offensive to modesty, decency, or propriety, or shocks the moral sense, because of its vulgar, filthy, or disgusting nature, or its tendency to incite lustful thought. Language is indecent if it tends reasonably to corrupt morals or incite libidinous thoughts. The language must violate community standards. See paragraph 45 if the communication was made in the physical presence of a child."

(z) Paragraph 97, Article 134 -- (Pandering and prostitution) is amended to read as follows:

"(3) *Pandering by inducing, enticing, or procuring act of prostitution.*

(a) That the accused induced, enticed, or procured a certain person to engage in an act of sexual intercourse for hire and reward with a person to be directed to said person by the accused;

(b) That this inducing, enticing, or procuring was wrongful;

(c) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces."

(aa) Paragraph 97, Article 134 -- (Pandering and prostitution), subsection (f) (3) is amended to read as follows:

"(3) *Inducing, enticing, or procuring act of prostitution.*

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20____, wrongfully (induce) (entice) (procure)

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_____ to engage in (an act) (acts) of (sexual intercourse for
hire and reward) with persons to be directed to him/her by the
said _____."

Executive Order 13448 of October 18, 2007

**Blocking Property and Prohibiting Certain Transactions
Related to Burma**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the Burmese Freedom and Democracy Act of 2003 (Public Law 108–61, as amended, 50 U.S.C. 1701 note), and section 301 of title 3, United States Code, and in order to take additional steps with respect to the Government of Burma's continued repression of the democratic opposition in Burma,

I, GEORGE W. BUSH, President of the United States of America, hereby expand the scope of the national emergency declared in Executive Order 13047 of May 20, 1997, and relied upon for additional steps taken in Executive Order 13310 of July 28, 2003, finding that the Government of Burma's continued repression of the democratic opposition in Burma, manifested most recently in the violent response to peaceful demonstrations, the commission of human rights abuses related to political repression, and engagement in public corruption, including by diverting or misusing Burmese public assets or by misusing public authority, constitute an unusual and extraordinary threat to the national security and foreign policy of the United States, and I hereby order:

Section 1. Except to the extent provided in section 203(b)(1), (3), and (4) of IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)), the Trade Sanctions Reform and Export Enhancement Act of 2000 (title IX, Public Law 106–387), or regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, all property and interests in property of the following persons that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(a) the persons listed in the Annex attached and made a part of this order; and

(b) any person determined by the Secretary of the Treasury, after consultation with the Secretary of State:

(i) to be a senior official of the Government of Burma, the State Peace and Development Council of Burma, the Union Solidarity and Development Association of Burma, or any successor entity to any of the foregoing;

(ii) to be responsible for, or to have participated in, human rights abuses related to political repression in Burma;

(iii) to be engaged, or to have engaged, in activities facilitating public corruption by senior officials of the Government of Burma;

(iv) to have materially assisted, sponsored, or provided financial, material, logistical, or technical support for, or goods or services in support

of, the Government of Burma, the State Peace and Development Council of Burma, the Union Solidarity and Development Association of Burma, any successor entity to any of the foregoing, any senior official of any of the foregoing, or any person whose property and interests in property are blocked pursuant to Executive Order 13310 or section 1(b)(i)-(v) of this order;

(v) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to Executive Order 13310 or section 1(b)(i)-(v) of this order; or

(vi) to be a spouse or dependent child of any person whose property and interests in property are blocked pursuant to this order or Executive Order 13310.

Sec. 2. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. For purposes of this order:

(a) the term “person” means an individual or entity;

(b) the term “entity” means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term “United States person” means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States; and

(d) the term “Government of Burma” means the Government of Burma (sometimes referred to as Myanmar), its agencies, instrumentalities and controlled entities, and the Central Bank of Burma.

Sec. 4. I hereby determine that the making of donations of the type specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of, persons whose property and interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency declared in Executive Order 13047, and relied upon for additional steps taken in Executive Order 13310, and expanded in this order, and hereby prohibit such donations as provided by section 1 of this order.

Sec. 5. For those persons whose property and interests in property are blocked pursuant to section 1 of this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 13047, and relied upon for additional steps taken in Executive Order 13310, and expanded in this order, there need be no prior notice of a listing or determination made pursuant to this order.

Sec. 6. The Secretary of the Treasury, after consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and section 4 of the Burmese Freedom and Democracy Act of 2003 as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 7. The Secretary of the Treasury, after consultation with the Secretary of State, is authorized to determine, subsequent to the effective date of this order, that circumstances no longer warrant inclusion of a person in the Annex to this order and that the property and interests in property of that person are therefore no longer blocked pursuant to section 1 of this order.

Sec. 8. Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses, or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under 31 C.F.R. chapter V, except as expressly terminated, modified, or suspended by or pursuant to this order.

Sec. 9. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

Sec. 10. This order is effective at 12:01 a.m. eastern daylight time on October 19, 2007.

GEORGE W. BUSH

The White House,
October 18, 2007.

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Annex

Individuals

1. Tay ZA; Managing Director, Htoo Trading Company Limited; Chairman, Air Bagan Holdings Pte. Limited (d.b.a. Air Bagan); Managing Director, Pavo Trading Pte. Ltd.; DOB Jul 18, 1967; nationality, Burma
2. Pye Phyo Tay ZA; DOB Jan 29, 1987; nationality, Burma
3. Thidar ZAW; DOB Feb 24, 1962; nationality, Burma
4. Htay MYINT; Chairman, Yuzana Company Limited; DOB Feb 6, 1955; nationality, Burma
5. Khin SHWE; President, Zay Gabar Company; DOB Jan 21, 1952; nationality, Burma

Entities

1. Htoo Trading Company Limited; Yangon, Burma
2. Pavo Trading Pte. Ltd.; Singapore
3. Air Bagan Holdings Pte Ltd. (d.b.a. Air Bagan); Singapore
4. Air Bagan Limited (d.b.a. Air Bagan); Burma
5. Htoo Wood Products Pte. Limited; Singapore; Yangon, Burma
6. Yuzana Company Limited (a.k.a. Yuzana Construction); Yangon, Burma
7. Zay Gabar Company (a.k.a. Zaykabar Company); Burma

Executive Order 13449 of October 20, 2007

Protection of Striped Bass and Red Drum Fish Populations

By the authority vested in me as President by the Constitution and the laws of the United States of America, to assist in ensuring faithful execution of the Magnuson-Stevens Fishery Conservation and Management Act, the Atlantic Coastal Fisheries Cooperative Management Act, and the Atlantic Striped Bass Conservation Act (chapters 38, 71, and 71A of title 16, United States Code), and to conserve striped bass and red drum fish, it is hereby ordered as follows:

Section 1. Policy. It shall be the policy of the United States to conserve striped bass and red drum for the recreational, economic, and environmental benefit of the present and future generations of Americans, based on sound science and in cooperation with State, territorial, local, and tribal governments, the private sector, and others, as appropriate.

Sec. 2. Implementation. (a) To carry out the policy set forth in section 1, the Secretary of Commerce shall:

(i) encourage, as appropriate, management under Federal, State, territorial, tribal, and local laws that supports the policy of conserving striped bass and red drum, including State designation as gamefish where the State determines appropriate under applicable law;

(ii) revise current regulations, as appropriate, to include prohibiting the sale of striped bass and red drum caught within the Exclusive Economic Zone of the United States off the Atlantic Ocean and the Gulf of Mexico;

(iii) periodically review the status of the striped bass and red drum populations within waters subject to the jurisdiction of the United States and:

(A) take such actions within the authority of the Secretary of Commerce as may be appropriate to carry out the policy set forth in section 1 of this order; and

(B) recommend to the President such actions as the Secretary may deem appropriate to advance the policy set forth in section 1 that are not within the authority of the Secretary.

(b) Nothing in this order shall preclude or restrict the production, possession, or sale of striped bass or red drum fish that have been produced by aquaculture.

(c) The Secretary of Commerce shall implement subsections 2(a)(i) and (iii), insofar as they relate to Atlantic striped bass, jointly with the Secretary of the Interior, as appropriate.

Sec. 3. Definitions. As used in this order:

(a) “Exclusive Economic Zone of the United States” means the marine area of the United States as defined in Presidential Proclamation 5030 of March 10, 1983, with, for purposes of this order, the inner boundary of that zone being a line coterminous with the seaward boundary of each of the coastal States;

(b) “red drum” means the species *Sciaenops ocellatus*; and

(c) “striped bass” means the species *Morone saxatilis*.

Sec. 4. General Provisions. (a) This order shall be implemented in a manner consistent with applicable law (including but not limited to interstate compacts to which the United States has consented by law, treaties and other international agreements to which the United States is a party, treaties to which the United States and an Indian tribe are parties, and laws of the United States conferring rights on Indian tribes) and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, and legislative proposals.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any other person.

GEORGE W. BUSH

The White House,
October 20, 2007.

Executive Order 13450 of November 13, 2007

Protection of Striped Bass and Red Drum Fish Populations

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 305 and 306 of title 5, sections 1115, 1116, and 9703 of title 31, and chapter 28 of title 39, United States Code, and to improve the effectiveness and efficiency of the Federal Government and promote greater accountability of that Government to the American people, it is hereby ordered as follows:

Section 1. Policy. It is the policy of the Federal Government to spend taxpayer dollars effectively, and more effectively each year. Agencies shall apply taxpayer resources efficiently in a manner that maximizes the effectiveness of Government programs in serving the American people.

Sec. 2. Definitions. As used in this order:

(a) “agency” means:

(i) an executive agency as defined in section 105 of title 5, United States Code, other than the Government Accountability Office; and

(ii) the United States Postal Service and the Postal Regulatory Commission;

(b) “agency Performance Improvement Officer” means an employee of an agency who is a member of the Senior Executive Service or equivalent service, and who is designated by the head of the agency to carry out the duties set forth in section 5 of this order.

Sec. 3. Duties of Heads of Agencies. To assist in implementing the policy set forth in section 1 of this order, the head of each agency shall, with respect to each program administered in whole or in part by the agency:

(a) approve for implementation:

- (i) clear annual and long-term goals defined by objectively measurable outcomes; and
- (ii) specific plans for achieving the goals, including:
 - (A) assignments to specified agency personnel of:
 - (1) the duties necessary to achieve the goals; and
 - (2) the authority and resources necessary to fulfill such duties;
 - (B) means to measure:
 - (1) progress toward achievement of the goals; and
 - (2) efficiency in use of resources in making that progress; and
 - (C) mechanisms for ensuring continuous accountability of the specified agency personnel to the head of the agency for achievement of the goals and efficiency in use of resources in achievement of the goals;
- (b) assist the President, through the Director of the Office of Management and Budget (Director), in making recommendations to the Congress, including budget and appropriations recommendations, that are justified based on objective performance information and accurate estimates of the full costs of achieving the annual and long-term goals approved under subsection (a)(i) of this section; and
- (c) ensure that agency Internet websites available to the public include regularly updated and accurate information on the performance of the agency and its programs, in a readily useable and searchable form, that sets forth the successes, shortfalls, and challenges of each program and describes the agency's efforts to improve the performance of the program.

Sec. 4. *Additional Duties of the Director of the Office of Management and Budget.* (a) To assist in implementing the policy set forth in section 1 of this order, the Director shall issue instructions to the heads of agencies concerning:

- (i) the contents, and schedule for approval, of the goals and plans required by section 3 of this order; and
- (ii) the availability to the public in readily accessible and comprehensible form on the agency's Internet website (or in the **Federal Register** for any agency that does not have such a website), of the information approved by the head of each agency under section 3 of this order and other information relating to agency performance.
- (b) Instructions issued under subsection (a) of this section shall facilitate compliance with applicable law, presidential guidance, and Office of Management and Budget circulars and shall be designed to minimize duplication of effort and to assist in maximizing the efficiency and effectiveness of agencies and their programs.

Sec. 5. *Duties of Agency Performance Improvement Officers.* Subject to the direction of the head of the agency, each agency Performance Improvement Officer shall:

- (a) supervise the performance management activities of the agency, including:
 - (i) development of the goals, specific plans, and estimates for which section 3 of this order provides; and

- (ii) development of the agency's strategic plans, annual performance plans, and annual performance reports as required by law;
- (b) advise the head of the agency, with respect to a program administered in whole or in part by the agency, whether:
 - (i) goals proposed for the approval of the head of the agency under section 3(a)(i) of this order are:
 - (A) sufficiently aggressive toward full achievement of the purposes of the program; and
 - (B) realistic in light of authority and resources assigned to the specified agency personnel referred to in section 3(a)(ii)(A) of this order with respect to that program; and
 - (ii) means for measurement of progress toward achievement of the goals are sufficiently rigorous and accurate;
 - (c) convene the specified agency personnel referred to in section 3(a)(ii)(A) of this order, or appropriate subgroups thereof, regularly throughout each year to:
 - (i) assess performance of each program administered in whole or in part by the agency; and
 - (ii) consider means to improve the performance and efficiency of such program;
 - (d) assist the head of the agency in the development and use within the agency of performance measures in personnel performance appraisals, and, as appropriate, other agency personnel and planning processes; and
 - (e) report to the head of the agency on the implementation within the agency of the policy set forth in section 1 of this order.

Sec. 6. *Establishment and Operation of Performance Improvement Council.*

- (a) The Director shall establish, within the Office of Management and Budget for administrative purposes only, a Performance Improvement Council (Council), consistent with this order.
- (b) The Council shall consist exclusively of:
 - (i) the Deputy Director for Management of the Office of Management and Budget, who shall serve as Chair;
 - (ii) such agency Performance Improvement Officers, as determined by the Chair; and
 - (iii) such other full-time or permanent part-time employees of an agency, as determined by the Chair with the concurrence of the head of the agency concerned.
- (c) The Chair or the Chair's designee, in implementing subsection (d) of this section, shall convene and preside at the meetings of the Council, determine its agenda, direct its work, and establish and direct subgroups of the Council, as appropriate to deal with particular subject matters, that shall consist exclusively of members of the Council.
- (d) To assist in implementing the policy set forth in section 1 of this order, the Council shall:

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(i) develop and submit to the Director, or when appropriate to the President through the Director, at times and in such formats as the Chair may specify, recommendations concerning:

(A) performance management policies and requirements; and

(B) criteria for evaluation of program performance;

(ii) facilitate the exchange among agencies of information on performance management, including strategic and annual planning and reporting, to accelerate improvements in program performance;

(iii) coordinate and monitor a continuous review by heads of agencies of the performance and management of all Federal programs that assesses the clarity of purpose, quality of strategic and performance planning and goals, management excellence, and results achieved for each agency's programs, with the results of these assessments and the evidence on which they are based made available to the public on or through the Internet website referred to in subsection (d)(iv);

(iv) to facilitate keeping the public informed, and with such assistance of heads of agencies as the Director may require, develop an Internet website that provides the public with information on how well each agency performs and that serves as a comprehensive source of information on:

(A) current program performance; and

(B) the status of program performance plans and agency Performance and Accountability Reports; and

(C) consistent with the direction of the head of the agency concerned after consultation with the Director, any publicly available reports by the agency's Inspector General concerning agency program performance;

(v) monitor implementation by agencies of the policy set forth in section 1 of this order and report thereon from time to time as appropriate to the Director, or when appropriate to the President through the Director, at such times and in such formats as the Chair may specify, together with any recommendations of the Council for more effective implementation of such policy;

(vi) at the request of the head of an agency, unless the Chair declines the request, promptly review and provide advice on a proposed action by that agency to implement the policy set forth in section 1 of this order; and

(vii) obtain information and advice, as appropriate, in a manner that seeks individual advice and does not involve collective judgment or consensus advice or deliberation, from:

(A) State, local, territorial, and tribal officials; and

(B) representatives of entities or other individuals.

(e)(i) To the extent permitted by law, the Office of Management and Budget shall provide the funding and administrative support the Council needs, as determined by the Director, to implement this section; and

(ii) the heads of agencies shall provide, as appropriate and to the extent permitted by law, such information and assistance as the Chair may request to implement this section.

Sec. 7. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) authority granted by law to an agency or the head thereof; or
- (ii) functions of the Director relating to budget, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law (including laws and executive orders relating to the protection of information from disclosure) and subject to the availability of appropriations.

(c) In implementing this order, the Director of National Intelligence shall perform the functions assigned to the Director of National Intelligence by the National Security Act of 1947, as amended (50 U.S.C. 401 *et seq.*), consistent with section 1018 of the Intelligence Reform and Terrorism Prevention Act (Public Law 108–458), and other applicable laws.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its agencies, or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH

The White House,
November 13, 2007.

Executive Order 13451 of November 19, 2007

Designating the ITER International Fusion Energy Organization as a Public International Organization Entitled To Enjoy Certain Privileges, Exemptions, and Immunities

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 1 of the International Organizations Immunities Act (22 U.S.C. 288), and finding that the United States participates in the ITER International Fusion Energy Organization under the authority of acts of Congress authorizing such participation and making an appropriation for such participation, including sections 971 and 972 of the Energy Policy Act of 2005 (42 U.S.C. 16311 and 16312) and laws making appropriations for the Department of Energy, it is hereby ordered as follows:

Section 1. Designation. I hereby designate the ITER International Fusion Energy Organization as a public international organization entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act.

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Sec. 2. *Non-Abridgement.* This designation is not intended to abridge in any respect privileges, exemptions, or immunities that the ITER International Fusion Energy Organization otherwise may have acquired or may acquire by law.

GEORGE W. BUSH

The White House,
November 19, 2007.

Executive Order 13452 of November 28, 2007

**Establishing an Emergency Board To Investigate Disputes
Between the National Railroad Passenger Corporation and
Certain of Its Employees Represented by Certain Labor
Organizations**

Disputes exist between National Railroad Passenger Corporation (Amtrak) and certain of its employees represented by certain labor organizations. The labor organizations involved in these disputes are designated on the attached list, which is made a part of this order.

The disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (45 U.S.C. 151 *et seq.*) (RLA).

In the judgment of the National Mediation Board, these disputes threaten substantially to interrupt interstate commerce to a degree that would deprive sections of the country of essential transportation service.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States, including section 10 of the RLA (45 U.S.C. 160), it is hereby ordered as follows:

Section 1. *Establishment of Emergency Board (Board).* There is established, effective 12:01 a.m. eastern standard time on December 1, 2007, a Board of five members to be appointed by the President to investigate and report on these disputes. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The Board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The Board shall report to the President with respect to the disputes within 30 days of its creation.

Sec. 3. *Maintaining Conditions.* As provided by section 10 of the RLA, from the date of the creation of the Board and for 30 days after the Board has submitted its report to the President, no change in the conditions out of which the disputes arose shall be made by the parties to the controversy, except by agreement of the parties.

Sec. 4. *Records Maintenance.* The records and files of the Board are records of the Office of the President and upon the Board's termination shall be maintained in the physical custody of the National Mediation Board.

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Sec. 5. *Expiration.* The Board shall terminate upon the submission of the report provided for in section 2 of this order.

GEORGE W. BUSH

The White House,
November 28, 2007.

Executive Order 13453 of December 6, 2007

**Closing of Executive Departments and Agencies of the
Federal Government on Monday, December 24, 2007**

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. All executive branch departments and agencies of the Federal Government shall be closed and their employees excused from duty on Monday, December 24, 2007, the day before Christmas Day, except as provided in section 2 below.

Sec. 2. The heads of executive branch departments and agencies may determine that certain offices and installations of their organizations, or parts thereof, must remain open and that certain employees must report for duty on December 24, 2007, for reasons of national security or defense or other public need.

Sec. 3. Monday, December 24, 2007, shall be considered as falling within the scope of Executive Order 11582 of February 11, 1971, and of 5 U.S.C. 5546 and 6103(b) and other similar statutes insofar as they relate to the pay and leave of employees of the United States.

GEORGE W. BUSH

The White House,
December 6, 2007.

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Subchapter B— Administrative Orders

Memorandum of January 5, 2007

Assignment of Functions Regarding the Citizens Health Care Working Group

Memorandum for the Secretary of Health and Human Services

By virtue of authority vested in me as President by the Constitution and laws of the United States, including section 301 of title 3 of the United States Code, the functions of the President under section 1014(o)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173) are assigned to the Secretary of Health and Human Services.

You are authorized and directed to publish this memorandum in the **Federal Register**.

GEORGE W. BUSH

THE WHITE HOUSE,
Washington, January 5, 2007.